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FOUNDATION OF NORTHERN CALIFORNIA
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San Francisco, California 94111
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Attorneys for Plaintiffs
AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA and
SAN FRANCISCO BAY GUARDIAN

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA; SAN FRANCISCO BAY GUARDIAN, Plaintiffs, v. DRUG ENFORCEMENT ADMINISTRATION, Defendant.	CASE NO.: C 11-01997 RS **DECLARATION OF NATASHA MINSKER IN SUPPORT OF PLAINTIFFS' REPLY** Hearing Date: May 12, 2011 Time: 1:30 pm Dept.: Courtroom 3, 17th Floor

I, Natasha Minsker, declare as follows:

1. I am the Death Penalty Policy Director for Plaintiff American Civil Liberties Union of Northern California ("ACLU-NC"). The facts set forth in this declaration are based on my personal knowledge and, if called to testify, I would and could competently testify thereto.

Recent developments

2. In my capacity as Death Penalty Policy Director at ACLU-NC, I keep abreast with developments relating to the death penalty in California and nationwide.

3. As set forth in my declaration submitted in support of Plaintiffs' preliminary injunction (Doc. 10), DEA has taken possession of imported sodium thiopental intended to be used in executions from Georgia, Kentucky, Tennessee, and South Carolina. *See* Declaration of Natasha Minsker In Support Of Preliminary Injunction (Doc. 10) at ¶31 and Exh. 16.

4. Since then, Alabama, which obtained its supply of sodium thiopental from Tennessee, publicly revealed that it too had surrendered its supply of the drug to DEA. A true and correct copy of a media article reporting these facts is attached as Exhibit 1 to this declaration. Thus, DEA has now taken possession of the supply from at least five states.

5. As also set forth in my prior declaration, at least seven states (Arizona, Arkansas, California, Georgia, Kentucky, South Carolina, and Tennessee) obtained imported sodium thiopental that originated with United Kingdom distributor Dream Pharma. *See* Minsker Decl. (Doc. 10) at ¶17. An additional two states, Nebraska and South Dakota, obtained the drug from a company in India. *See id.* Recent revelations about Alabama's procurement of the drug from a foreign source bring up the total number of states that have obtained imported sodium thiopental to ten.

6. While DEA has now taken custody of sodium thiopental from five states, it does not appear to have taken the supply of Arizona, Arkansas, California, Nebraska or South Dakota.

Documents produced by DEA are missing documents known to exist

7. On May 6, 2011, I received a package from the Drug Enforcement Administration producing records in response to my Freedom of Information Act request to the

agency of January 4, 2011. A true and correct copy of the package I received from DEA is attached as Exhibit 2 to this declaration.

8. The package contained a cover letter stating that 27 pages were being released and that DEA was in the process of consulting with other agencies over an additional 12 pages that had been identified as responsive to my request, and that might be released pending consultation with the other agencies.

9. On May 6, 2011, DEA filed a declaration in this matter. The declaration indicates that the 39 pages identified in the May 6, 2011 package constitute responsive documents located at DEA Headquarters. DEA further indicated in the declaration that it initiated a supplemental search of its Headquarters and some, but not all, of its Field Divisions and will complete processing of documents found as a result of that search on or before May 16, 2011.

10. I personally reviewed the 27 pages produced by DEA. The documents produced consist entirely of emails and one spreadsheet, which appears to be an attachment to an email. (Page 15 is an email from DEA to the California Department of Corrections and Rehabilitation ("CDCR") attaching a spreadsheet of companies registered with DEA to import sodium thiopental. Page 37, a spreadsheet of companies, is presumably the attachment to the email at Page 15.) The emails pertain only to California's effort to import sodium thiopental; and internal DEA questions about the drugs obtained by the Arizona Department of Corrections, including whether the DEA Phoenix, Arizona division intended to seize Arizona's supply. Despite the fact that ten other states obtained imported sodium thiopental and DEA assumed the supply of five states, there is no email traffic about states other than California or Arizona. Further, the production does not include non-email documents, such as letters that may have been mailed to or from DEA, import declarations, DEA forms, or information from DEA databases.

11. The documents produced do not contain at least three documents which I know to exist, which are responsive to my January 4, 2011 FOIA request, and which should be located at DEA Headquarters. These documents are described below:

12. Through litigation under the California Public Records Act against CDCR, the ACLU-NC obtained a letter dated August 18, 2010 from a CDCR official to the DEA Office of

Diversion Control regarding California's effort to import sodium thiopental. The August 18, 2010 letter is responsive to my January 4, 2011 FOIA letter, Request Number 1, which seeks communications between "DEA and any state officials ... regarding the importation of sodium thiopental . . . for the purpose of execution." Although the address on the letter is redacted, DEA regulations state that the Office of Diversion Control is located at DEA headquarters in Springfield, Virginia. *See* 21 C.F.R. §1321.01. An email also produced in the litigation against CDCR states that the August 18, 2010 letter was mailed. DEA's May 6, 2011 production does not include the August 18, 2010 letter. A true and correct copy of the letter and the email stating that the letter was mailed is attached as Exhibit 3 to this declaration.

13. By letter dated February 24, 2011, counsel for an inmate on Georgia's death row wrote to Attorney General Eric Holder and Administrator of the Drug Enforcement Administration, Michele Leonhart, urging an investigation of Georgia's importation of sodium thiopental. Subsequently, the DEA seized Georgia's supply of sodium thiopental. *See* Minsker Decl. (Doc. 10) at ¶31 & Exh. 16. The February 24, 2011 letter to DEA Administrator Leonhart is responsive to my January 4, 2011 FOIA letter, Request Number 6, which seeks communications between "DEA and any private individual regarding the importation, transfer or purchase of sodium thiopental ... by state officials for the purpose of execution." DEA regulations state that the DEA Administrator is located at DEA headquarters in Springfield, Virginia. *See* 21 C.F.R. §1321.01. DEA's May 6, 2011 production does not include the February 24, 2011 letter or documents relating to the subsequent DEA investigation and seizure of Georgia's sodium thiopental supply. The February 24, 2011 was posted on the internet by a law firm that specializes in food and drug law at http://www.hpm.com/pdf/Holder%20Thiopental%20Ltr.pdf, and a true and correct copy of the letter obtained from that website is attached as Exhibit 4 to this declaration.

14. By letter dated April 22, 2011, counsel for inmates on Alabama's death row wrote to Attorney General Holder and DEA Administrator Leonhart, requesting an investigation into Alabama's compliance with federal law, in light of revelations that Alabama obtained its supply of sodium thiopental from Tennessee, which had in turn imported its supply from overseas and

had its supply of sodium thiopental seized by DEA. A few days later, Alabama publicly revealed that it had turned over its supply of sodium thiopental to DEA. *See supra* at ¶4 and Exh. 1. The April 22, 2011 letter to DEA Administrator is responsive to my January 4, 2011 FOIA letter, Request Number 6. DEA's May 6, 2011 production does not include the April 22, 2011 letter or documents relating to DEA's assumption of custody of Alabama's supply of sodium thiopental. The April 22, 2011 Alabama letter was posted on the internet by counsel that authored the letter at http://eji.org/eji/files/4-25-11%20FINAL%20LTR%20TO%20ERIC%20HOLDER.pdf, and a true and correct copy of the letter obtained from that website is attached as Exhibit 5 to this declaration.

15. Even though numerous states have imported sodium thiopental, *see supra* at ¶¶3-5, the documents produced by DEA do not contain any import declarations, also known as DEA form 236, *see* 21 C.F.R. §1312.18(b). Such documents would be responsive to my January 4, 2011 FOIA letter, Request Number 9, which seeks documents "regarding any actual importation of sodium thiopental … by state officials for the purpose of execution, including but not limited to: declarations under 21 CFR §1312.18b; DEA form 236 …."

16. Even though DEA has assumed custody of the sodium thiopental from at least five states (Alabama, Georgia, Kentucky, Tennessee, and South Carolina), the documents produced by DEA do not contain any documents relating to DEA's assumption of custody of the sodium thiopental possessed by these states. Such documents would be responsive to my January 4, 2011 FOIA letter, Requests 4, 9, 10, and 11. Request 4 seeks internal DEA communications regarding the importation, transfer or purchase of sodium thiopental by state officials for the purpose of execution. Requests 9 through 11 seek records regarding any actual importation, transfer, or purchase of sodium thiopental by state officials for the purpose of execution.

DEA documentation requirements for seizures of drugs

17. The United States General Accounting Office produced a report entitled "Seized Drugs and Weapons: DEA Needs to Improve Certain Physical Safeguards and Strengthen Accountability." The report discusses, among other things, DEA documentation procedures when DEA seizes drugs. The GAO has made the report available on the internet at

http://www.gao.gov/archive/2000/ai00017.pdf, and a true and correct copy of the report obtained from that website is attached as Exhibit 6 to this declaration.

18. DEA also has a database called IMPACT (Investigative Management Program and Case Tracking System), which is "a web-based case management system" intended to "improve mission performance and achieve greater operational efficiency relative to the establishment, recording, accessibility, and analysis of information pertaining to DEA investigative activities." IMPACT is described in a report by the Office of Information Systems, Drug Enforcement Administration, titled "Privacy Impact Assessment for the Investigative Management Program and Case Tracking System (February 4, 2008)" and which DEA has made available on its website (http://www.justice.gov/dea/foia/impact_pia_2-4-08-internet_version.pdf). A true and correct copy of the report obtained from that website is attached as Exhibit 7 to this declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 10 day of May 2011 at San Francisco, CA

Natasha Minsker

Exhibit 1

THE WALL STREET JOURNAL.
WSJ.com

U.S. NEWS | APRIL 26, 2011, 7:46 P.M. ET

Alabama Hands Over Execution Drug to Federal Authorities

By NATHAN KOPPEL

Alabama said Tuesday that it turned over its supplies of a drug used in executions to the Drug Enforcement Administration, becoming the latest state to face setbacks due to a nationwide shortage of the drug.

Georgia, Tennessee and Kentucky earlier relinquished their supplies of thiopental, used with other drugs to carry out lethal injections, amid claims from attorneys for death-row inmates that states acquired the drug in violation of federal import laws.

A yearlong shortage of thiopental has delayed executions and prompted states to acquire foreign-made batches of the drug.

Alabama also announced that due to the thiopental shortage it would now allow the use of the sedative pentobarbital, a drug used in animal euthanasia, for future executions.

Alabama obtained a small amount of thiopental from Tennessee, but Alabama later "willingly" turned over that drug supply after it was contacted by the DEA, an Alabama prison spokesman said in a statement. The state didn't disclose when it handed over the drug or elaborate on the DEA's concerns.

Alabama will "cooperate fully with federal authorities," the statement said. The Justice Department couldn't be reached for comment.

Write to Nathan Koppel at nathan.koppel@wsj.com

Exhibit 2

U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrissette Drive
Springfield, Virginia 22152

MAY 0 4 2011

Case Number: 11-00133-F

Subject: RECORDS CREATED SINCE JANUARY 1, 2010 OF COMMUNICATION BETWEEN ANY PERSON AT THE DEA AND ANY STATE OFFICIAL, EMPLOYEE OR AGENT REGARDING THE IMPORTATION FROM ANOTHER COUNTRY OF SODIUM THIOPENTAL, PANCURONIUM BROMIDE, AND/OR POTASSIUM CHLORIDE FOR THE PURPOSE OF EXECUTION, ETC.

Natasha Minsker
American Civil Liberties Union
of Northern California
39 Drumm Street
San Francisco, California 94111

Dear Ms. Minsker:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated January 04, 2011, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject.

The processing of your request identified certain materials that will be released to you. Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and/or the Privacy Act, 5 U.S.C. § 552a. Please refer to the list enclosed with this letter that identifies the authority for withholding the deleted material, which is indicated by a mark appearing in the block next to the exemption. An additional enclosure with this letter explains these exemptions in more detail. The documents are being forwarded to you with this letter.

Certain DEA documents contained information furnished by other government agencies. DEA is in the process of consulting with the agencies before granting access to the documents in accordance with 28 C.F.R § 16.4 and/or 16.42. You will be notified if more material is available for release pending results from the consultations.

If you have any questions regarding this letter, you may contact FOI Specialist Rita A. Cuellar on 202-307-7610.

Sincerely,

Katherine Myrick

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Enclosures

Number of pages withheld: 0

Number of pages released: 27

Number of pages referred: 0

Number of pages consulted: 12

APPLICABLE SECTIONS OF THE FREEDOM OF INFORMATION AND/OR PRIVACY ACT:

Freedom of Information Act 5 U.S.C. 552			**Privacy Act 5 U.S.C. 552a**	
[ ] (b)(1)	[X] (b)(5)	[X] (b)(7)(C)	[ ] (d)(5)	[ ] (k)(2)
[ ] (b)(2)	[X] (b)(6)	[ ] (b)(7)(D)	[ ] (j)(2)	[ ] (k)(5)
[ ] (b)(3)	[X] (b)(7)(A)	[ ] (b)(7)(E)	[ ] (k)(1)	[ ] (k)(6)
[ ] (b)(4)	[ ] (b)(7)(B)	[X] (b)(7)(F)		

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

(b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.

(b)(2) Materials related solely to the internal rules and practices of DEA.

(b)(3) Information specifically exempted from disclosure by another federal statute.

(b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.

(b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.

(b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

(d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.

(j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.

(k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.

(k)(2) Material compiled during civil investigations for law enforcement purposes.

(k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.

(k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

(b)(6)

From: McAuliffe, John@CDCR [John.McAuliffe@cdcr.ca.gov]
Sent: Tuesday, October 05, 2010 2:09 PM
To: (b)(6)
Cc: Kernan, Scott@CDCR
Subject: Chemique Pharmaceutical Inc.

(b)(6)

Thank you for the list of companies listed with the DEA to import Thiopental. We have contacted Chemique Pharmaceutical Inc. (Mr. Phil Millman) who has initially agreed to procure the Thiopental from London. We gave Mr. Millman your email as a point of contact with DEA since you know exactly what we have been doing and to whom we have been in contact with in your Department. Again thank you for your help and assistance.
John McAuliffe

ODL E-MAIL

U.S. Department of Justice
Drug Enforcement Administration
www.deaDiversion.usdoj.gov
1-877-RxAbuse

(b)(6)

From: McAuliffe, John@CDCR [John.McAuliffe@cdcr.ca.gov]
Sent: Monday, December 06, 2010 2:51 PM
To: (b)(6)
Cc: McClease, Kelly@CDCR
Subject: FW: DEA Registered Importers of Thiopental

(b)(6)

I am the emailing you concerning the list you provided CDCR (companies specifically registered with DEA to import thiopental). A question has come up whether or not the list you provided is considered confidential by your Department? Specifically, if this list is requested is it public record for all? Again, thank you in advance for all your help.
John McAuliffe
California Department of Corrections and Rehabilitation

From: McAuliffe, John@CDCR
Sent: Monday, October 04, 2010 3:17 PM
To: Kernan, Scott@CDCR
Subject: Re: DEA Registered Importers of Thiopental

Scott
I can work on this list early Tuesday AM and give you full update prior to our meeting on Tuesday at 1:30. I will start working on phone #'s and contact person now.
John

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Sent: Mon Oct 04 14:59:51 2010
Subject: FW: DEA Registered Importers of Thiopental

For our records.

Scott

From: (b)(6)
Sent: Monday, October 04, 2010 2:58 PM
To: Kernan, Scott@CDCR
Subject: Re: DEA Registered Importers of Thiopental

The listed companies would file the appropriate paperwork. DEA would not require anything from the Dept of Corrections.

(b)(6)
Liaison and Policy Section
Office of Diversion Control

From: Kernan, Scott@CDCR <Scott.Kernan@cdcr.ca.gov>
To: (b)(6)
Sent: Mon Oct 04 17:48:07 2010
Subject: RE: DEA Registered Importers of Thiopental

(b)(6)

Thank you very much for getting me this list. We will contact them directly. I assume that if we can get one of them to import the drug for us that they will complete the appropriate documentation and you would not need anything directly from the department? Thanks again for your help.

Scott

From: (b)(6)
Sent: Monday, October 04, 2010 1:19 PM
To: Kernan, Scott@CDCR
Subject: DEA Registered Importers of Thiopental

Attached is a spreadsheet containing companies who are specifically registered with DEA to import Thiopental. We are looking to send you an expanded list of companies as Thiopental belongs to a larger class of barbiturates. I'll send additional information if the additional importers are pertinent to your issue.

<<Importers of Thiopental.xml>>

(b)(6)

Liaison and Policy Section

Office of Diversion Control

(b)(6)

(b)(6)

From: (b)(6)
Sent: Thursday, January 27, 2011 11:28 AM
To: (b)(6)

News Release

Hospira Statement Regarding Pentothal™ (sodium thiopental) Market Exit

LAKE FOREST, Ill., Jan. 21, 2011 - Hospira announced today it will exit the sodium thiopental market and no longer attempt to resume production of its product, Pentothal™.

Hospira had intended to produce Pentothal at its Italian plant. In the last month, we've had ongoing dialogue with the Italian authorities concerning the use of Pentothal in capital punishment procedures in the United States – a use Hospira has never condoned. Italy's intent is that we control the product all the way to the ultimate end user to prevent use in capital punishment. These discussions and internal deliberation, as well as conversations with wholesalers - the primary distributors of the product to customers - led us to believe we could not prevent the drug from being diverted to departments of corrections for use in capital punishment procedures.

Based on this understanding, we cannot take the risk that we will be held liable by the Italian authorities if the product is diverted for use in capital punishment. Exposing our employees or facilities to liability is not a risk we are prepared to take.

Given the issues surrounding the product, including the government's requirements and challenges bringing the drug back to market, Hospira has decided to exit the market. We regret that issues outside of our control forced Hospira's decision to exit the market, and that our many hospital customers who use the drug for its well-established medical benefits will not be able to obtain the product from Hospira.

(b)(6)
Liaison and Policy Section
Office of Diversion Control
Drug Enforcement Administration
(b)(6)

(b)(6)

From: (b)(6)
Sent: Wednesday, December 08, 2010 6:06 PM
To: (b)(6)
Subject: Fw: I know you both dealt with this issues - just want to send an article I saw today

Fyi

(b)(6)
Liaison and Policy Section
Office of Diversion Control
Drug Enforcement Administration

From: (b)(6)
To: (b)(6)
Sent: Wed Dec 08 18:03:11 2010
Subject: I know you both dealt with this issues - just want to send an article I saw today

California buys execution drug from Britain

AFP DECEMBER 7, 2010

LOS ANGELES - California has bought a large batch of a drug used for executions from Britain after running out of supplies, officials said Tuesday, stressing that the shipment did not break any U.S. rules.

The supply of 521 grams of sodium thiopental, made by British drug company Archimedes Pharma, was ordered before British authorities announced new export controls for the powerful anesthetic late last month.

The California Department of Corrections and Rehabilitation said it had bought the drug through a distributor, not directly from the British company, which has denied exporting the chemical.

"They supply the drug to distributors; we worked with the distributor," said CDCR spokesman Terry Thornton, adding: "We worked in accordance with all state and federal laws to obtain this shipment."

For months now, several U.S. states have struggled to find supplies of the powerful painkiller, the first and most crucial of three drugs used in lethal injections. The shortage has forced some states to put executions on hold.

Late last month British business minister Vince Cable announced new export controls on the drug, saying they would come into force "as soon as practicable."

"We had ordered it prior" to that announcement, said the CDCR spokeswoman, noting that "we have been actively seeking supplies of the drug for several months now" after the expiry date on its own stocks had run out on October 1.

Archimedes said in October that it did not have information on end users of purchasers of its products, but insisted it "neither exports the product to the U.S. for any purpose nor is it aware of any exports of the product."

The CDCR spokeswoman said the batch of the drug had been approved by U.S. Customs and the Drug Enforcement Administration (DEA), and was currently in transit "on the East Coast."

"We're waiting for the FDA to release the shipment to us," said Thornton, referring to the U.S. Food and Drug Administration.

(b)(6)

From: (b)(6)
Sent: Thursday, November 11, 2010 1:50 PM
To: Boggs, Gary
Subject: Re: Today's call

Yes, I did get the number and code although my Blackberry doesn't seem to be in sync to consistently receive email. The only import I'm aware of is the one in process to the state of California.

(b)(6)
Liaison and Policy Section
Office of Diversion Control

----- Original Message -----
From: Boggs, Gary
To: (b)(6)
Sent: Thu Nov 11 13:24:40 2010
Subject: Today's call

(b)(6)
Did you get the call in number and passcode? Also do you know how many imports we have approved for thiopental over the past year and whether we have any pending requests?

(b)(6)

From: (b)(6)
Sent: Wednesday, October 27, 2010 7:44 AM
To: Boggs, Gary
Subject: FYI

Arizona Goes Overseas for Lethal Injection Drug

Updated: 11 hours 22 minutes ago
Print Text Size
Print this page|EmailShare on FacebookShare on TwitterShare on DiggShare on Lifestream
Amanda Lee Myers and Andrew Welsh-Huggin
AP
FLORENCE, Ariz. (Oct. 26) – Facing a nationwide shortage of a lethal injection drug, Arizona has taken an unusual step that other death penalty states may soon follow: get their supplies from another country.

Such a move, experts say, raises questions about the effectiveness of the drug. But it also may further complicate executions in the 35 states that allow them, as inmates challenge the use of drugs not approved by federal inspectors for use in the U.S.

Arizona said Tuesday that it got its sodium thiopental from Great Britain, the first time a state has acknowledged obtaining the drug from outside the United States since the shortage began slowing executions in the spring.

"This drug came from a reputable place," Chief Deputy Attorney General Tim Nelson said. "There's all sorts of wild speculation that it came from a third-world country, and that's not accurate."

Nelson said the state revealed the drug's origins to let the public know that its supply is trustworthy and to dispel rumors. However, he did not name the company that manufactured it.

Without assurances of the drug's quality, many questions will be raised, including its effectiveness and how it should be handled, and would serve as a basis for lawsuits, said Deborah Denno, a law professor at Fordham University.

"The impact could be huge," Denno said. "The source of the thiopental is critical."

A federal judge in Arizona blocked the Tuesday execution of convicted killer Jeffrey Landrigan because the state obtained the drug from a previously unidentified overseas source. The judge questioned whether it might be unsafe.

Landrigan's lawyers contend he could be suffocated painfully if the sodium thiopental doesn't render him unconscious. In lethal injections, sodium thiopental makes an inmate unconscious before a second drug paralyzes him and a third drug stops his heart.

Hospira Inc. of Lake Forest, Ill., the sole U.S. manufacturer of the drug, has blamed the shortage on unspecified problems with its raw-material suppliers and said new batches will not be available until January at the earliest.

There are no FDA-approved overseas manufacturers of the drug.

The limited supply has also directly affected executions in California, Kentucky, Ohio and Oklahoma, and may affect executions in Missouri, which says its supply of sodium thiopental expires in January.

California officials say they acquired a dosage of 12 grams in September with a 2012 expiration date. But there was some dispute about the source. Hospira said its remaining supplies expire next year and California could only have obtained it elsewhere.

The state prison system would not address the discrepancy. "The state obtained the sodium thiopental lawfully from within

the United States," Terry Thornton, a corrections spokeswoman told The Associated Press.

Ohio, which spends about $350 for the drug for each execution, ran out of the amount prescribed by state procedures just three days before a May 13 execution. The state obtained enough in time but won't say where.

A few weeks ago, Kentucky's governor held off signing death warrants setting execution dates for two inmates because the state is almost out of sodium thiopental. The state's lone dose expired Oct. 1.

Officials say they have tried unsuccessfully to get the drug from other states, and have gotten calls from states looking for it.

In August, an Oklahoma judge delayed the execution of Jeffrey Matthews when the state tried to switch anesthetics after running out of its regular supply in August. Matthews was convicted of killing his 77-year-old great-uncle during a 1994 robbery.

Oklahoma finally found enough sodium thiopental from another state, but the court-ordered delay continues.

The controversy could end if Hospira resumes making the drug next year as indicated, or states could switch to another drug.

At least 15 states, including Arizona, Florida, Missouri, Texas and Tennessee, might be able to switch drugs without a new law or administrative process, death penalty expert Megan McCracken said.

In Arizona, officials say U.S. District Court Judge Roslyn Silver's order should be lifted because the U.S. Supreme Court ruled in 1985 that Food and Drug Administration approval isn't necessary for the drugs to be used specifically for executions.

The state filed a motion with the Supreme Court, and was awaiting word Tuesday on whether it can proceed.

The delay, prosecutors say, is one reason the public has lost some faith in the criminal justice system.

"We're 20 years in and we're not arguing over guilt or innocence," said interim Maricopa County Attorney Rick Romley, whose office prosecuted Landrigan in the 1989 killing of Chester Dyer during a robbery. "We have lawyers fighting lawyers."

In recent years, lethal injections have run into high-profile problems, including botched executions.

Ohio and Washington have switched from a three-drug method to a single, powerful dose of sodium thiopental. The change helps avoid litigation over pain that inmates could suffer from the second and third drugs if they haven't been knocked out.

The switch doesn't affect the drug's administration, which has led to a number of fumbled executions, including a September 2009 procedure in Ohio in which the governor stopped an execution after two hours when officials couldn't find a usable vein.

The issue will come down to whether an overseas version of sodium thiopental would be equivalent to what the FDA has approved here, said Ty Alper, associate director of the death penalty clinic at the University of California-Berkeley.

"It really opens the door to Eighth Amendment challenges that go to the heart of whether executions work the way they're supposed to," he said, referring to the amendment about prohibiting cruel and unusual punishment.

Welsh-Huggins reported from Columbus, Ohio.

(b)(6)

Liaison and Policy Section
Office of Diversion Control

Drug Enforcement Administration

(b)(6)

(b)(6)

From: (b)(6)
Sent: Friday, October 08, 2010 11:44 AM
To: (b)(6)
Subject: FW: Steps to Import a Controlled Substance

(b)(6) could you contact Mr. Millman and assist him?

(b)(6)
Liaison and Policy Section
Office of Diversion Control
Drug Enforcement Administration
(b)(6)

From: Phil Millman [mailto:chemique2000@yahoo.com]
Sent: Friday, October 08, 2010 11:00 AM
To: (b)(6)
Subject: Steps to Import a Controlled Substance

Dear (b)(6) Chief Liaison and Policy Section

I have been approached by John McAuliffee from the CDCR in California to procure from Dream Pharma, LID , in London England
Sodium Pentathol, a schedule III barbiturate, Thiopental DEA Code 2329.
The California Bureau of Corrections is requesting Chemique Pharmaceuticals, Inc. DEA Lic RC0138417 to investigate the process of importing
84 sterile finished packages that contain 25 vials of 0.5grams(500mg) Sodium Pentothal each vial

It has been some time since I have imported a controlled substance.

Could you outline the steps I will have to take.

I f I remember correctly I will have to fill out a quota request first.

Please let me know at your connivence.

Thank you for your help in this matter.

Chemique Pharmaceuticals, Inc.
13306 E. Whittier Blvd
Whittier, CA 90602
(562) 698-0921 Monday through Friday 7:30am to 4:30pm PST
Fax (562) 693-6112
Phil Millman, Pharm.D.
e-mail:chemique2000@yahoo.com

SECURE, CONFIDENTIAL, and RETRIEVABLE fashion. Unauthorized re-disclosure and/or failure to maintain confidentiality is prohibited by law and could subject you to penalties described under the Federal HIPAA Act of 1996 and applicable State law.

(b)(6)

From: (b)(6),(b)(7)(C),(b)(7)(F)
Sent: Monday, March 28, 2011 3:06 PM
To: Rannazzisi, Joseph T.
Subject: RE: Prison unauthorized possession of Sodium Thiopental Schedule 3N - Have attached the news report

(b)(5),(b)(7)(A) I'll wait to hear from you.

(b)(6),(b)(7)(C),(b)(7)(F)

Assistant Special Agent in Charge
U.S. Drug Enforcement Administration
Phoenix Division
(b)(6),(b)(7)(C),(b)(7)(F)

From: Rannazzisi, Joseph T.
Sent: Monday, March 28, 2011 11:59 AM
To (b)(6),(b)(7)(C),(b)(7)(F)
Subject: Re: Prison unauthorized possession of Sodium Thiopental Schedule 3N - Have attached the news report

(b)(6), (b)(7)((b)(5),(b)(7)(A) I am in a hearing and will be out in 45 minutes.

From: (b)(6),(b)(7)(C),(b)(7)(F)
Sent: Monday, March 28, 2011 02:57 PM
To: Rannazzisi, Joseph T.
Cc: Boggs, Gary
Subject: FW: Prison unauthorized possession of Sodium Thiopental Schedule 3N - Have attached the news report

(b)(5),(b)(7)(A) just wanted to make sure you guys knew. It's been all over the media here that AZ was getting from the same source as GA, so if we snatch some from our prison, it's going to be big news.

Stay out of trouble.

(b)(6),(b)(7)(C),(b)(7)(F)

Acting Special Agent in Charge

U.S. Drug Enforcement Administration

Phoenix Division

(b)(6),(b)(7)(C),(b)(7)(F)

From: (b)(6)
Sent: Monday, March 28, 2011 7:54 AM
To: (b)(6)
Subject: Prison unauthorized possession of Sodium Thiopental Schedule 3N - Have attached the news report

As reported in the DEA NEW Clips:

DEA registrants in your area may or may not have in their possession the controlled substance sodium Thiopental please do a check of said prisons in your area and see if they have now or in the past requested or received this drug via unauthorized means. Please attempt to confiscate any and all controlled substances and you may used the AFD case number (G3-11-2022) on your DEA 7 and 7a's for drugs and documents pertaining to the illegal acquisition of this drug. I will grant those who will need access to Impact on an as need basis. Thanks

ATLANTA | Prison officials across the country have been going to extraordinary and in at least one case, legally questionable lengths to obtain a scarce lethal-injection drug, securing it from middlemen in Britain and a manufacturer in India and borrowing it from other states to keep their executions on schedule, according to records reviewed by the Associated Press.

"You guys in AZ are life savers," California prisons official Scott Kernan emailed a counterpart in Arizona, with what may have been unintentional irony, in appreciation for 12 grams of the drug sent in September. "Buy you a beer next time I get that way."

The wheeling and dealing come amid a severe shortage of sodium thiopental, a sedative that is part of the three-drug lethal-injection solution used by nearly all 34 death penalty states. The shortage started last year, after Hospira Inc., the sole U.S. manufacturer of the drug and the only sodium-thiopental maker approved by the Food and Drug Administration, stopped making it.

As supplies dwindled, at least six states Arizona, Arkansas, California, Georgia, Nebraska and Tennessee obtained sodium thiopental overseas, with some citing Georgia as the trailblazer.

Documents obtained through open-records requests show Georgia managed to execute inmates in September and January after getting the drug from Dream Pharma, a distributor that shares a building with a driving school in a gritty London neighborhood. Dream Pharma's owner has not returned several calls and emails for comment, and an AP reporter who visited the office last week was told the owner was not available.

Recently, however, the Drug Enforcement Administration seized Georgia's entire supply effectively blocking the scheduling of any further executions because of concerns over whether the state circumvented the law. "We had questions about how the drug was imported to the U.S.," agency spokesman Chuvalo Truesdell said, declining to elaborate.

Federal regulations require states to register with the DEA before importing a controlled substance and to notify the agency once they have it. John Bentivoglio, a former Justice Department attorney who represents a condemned Georgia inmate, said in a February letter that Georgia appears to have broken those rules, and that such violations mean "adulterated, counterfeit or otherwise ineffective" sodium thiopental could be used in executions, subjecting prisoners to extreme pain in violation of the constitutional ban on cruel and unusual punishment.

Georgia Corrections Department spokeswoman Joan Heath said only that the state is cooperating with federal investigators to "make sure we're in regulatory compliance with the DEA over how we handle controlled substances."

Kathryn Hamoudah of Georgians for Alternatives to the Death Penalty praised the DEA for forcing Georgia to "give up its black market drugs."

Defense attorneys elsewhere have called on the Justice Department to investigate whether their states broke the law in the way they obtained sodium thiopental. But most of the states that swapped or imported it have said they followed protocol. And the DEA has refused to say whether it is investigating them.

(b)(6)

Group Supervisor

DE Atlanta Division

(b)(6)

(b)(6)

From: (b)(6)
Sent: Monday, March 28, 2011 5:08 PM
To: Rannazzisi, Joseph T.
Cc: Boggs, Gary
Subject:
Attachments: AZ Execution Drug Mislabeled.docx

Joe- Please see the attached newspaper article from Today's Phoenix paper, re: Sodium Thiopental.

(b)(6)
Acting Special Agent in Charge
U.S. Drug Enforcement Administration
Phoenix Division
(b)(6)

March 28, 2011 |

Arizona: Execution drug mislabeled; use of substance may end soon

Prison chief: Use of controversial substance may end soon

by **Michael Kiefer** - Mar. 26, 2011 12:00 AM
The Arizona Republic

Arizona Department of Corrections Director Charles Ryan on Friday blamed clerical errors by employees of a local import broker and the U.S. Food and Drug Administration for misstating on federal documents that the agency was importing animal drugs to execute murderers.

In an exclusive interview, Ryan also told *The Arizona Republic* that after upcoming Arizona executions on Tuesday and April 5, the department will consider retooling the state's lethal-injection method to use a single drug instead of the current three-drug method that depends on an anesthetic that is no longer available.

Ryan reacted to a *Republic* report Thursday about two drugs, sodium thiopental and pancuronium bromide, which were imported from England for an Arizona execution in October and for the two upcoming executions.

FDA documents that U.S. Customs and Border Protection use to approve imports stated that the drugs were for animal use, raising questions as to whether they were being carried out with animal drugs or if the imports had been misidentified.

"The chemicals employed in the execution, then and now, and what we possess, are only for the purpose of human consumption," Ryan said. "It has nothing to do with animals."

Ryan ordered an investigation into the misrepresentation Friday morning, and the private import broker retained by the department took responsibility for the drugs being misidentified. Ryan pointed out that correspondence between his department and the federal agencies clearly stated that the drugs were to be used for inmate executions.

In an e-mail made available to *The Republic,* Robert Hornyan of Phoenix-based Arizona Customs Brokers claimed that an employee at his company mistakenly entered an incorrect code on a computer-generated import form while consulting with a local FDA official.

That shipment of the anesthetic thiopental and the paralytic drug pancuronium bromide arrived Sept. 28, identified on the FDA form as "(Anesthetic); Animal (Food Producing)" and "(Relaxant); Animal (Food Producing)."

A shipment of thiopental to the state Corrections Department a month later had the same description as an animal drug, however.

Under federal statutes, filing false federal documents is a crime punishable by up to five years in prison. An FDA spokeswoman said the agency could investigate incorrect filings and potentially pursue civil or criminal sanctions.

As in most states that use lethal injection as a method of execution, the Arizona protocol calls for an injection of thiopental, a barbiturate, to sedate the condemned man or woman, followed by pancuronium bromide to render the person motionless. Then, potassium chloride is injected to stop the heart.

If the thiopental sedation were to wear off too quickly, the condemned would suffer the effects of the other two drugs. Defense attorneys in several states have filed appeals and lawsuits questioning whether the imported drugs, which have not been evaluated by the FDA, meet medical standards.

Thiopental has not been produced in the U.S. since 2009, and supplies began to run out last spring, forcing states to begin researching imports from abroad.

Until now, Arizona officials would not divulge how they obtained the drug, though defense attorneys and news reports revealed details, including the English pharmaceutical-supply house that was exporting the drug until British authorities banned further exports for executions.

Ryan said that he initially canvassed other prison systems looking for the drug, "but the well was dry."

Then, he learned that Arkansas had found a source in the United Kingdom. The Corrections Department notified the FDA, customs and the U.S. Drug Enforcement Administration to arrange for the import, Ryan said. Despite FDA statements last fall and winter that there were no approved foreign sources for the drug, Deputy Corrections Director Charles Flanagan said, "We were never advised that the drugs were not allowed or that we could not import them."

"The FDA always told us there was a mechanism to bring the drugs in," Flanagan said. "We have never, ever heard from anyone in the FDA, the DEA, customs or any other agency that we cannot import these drugs. In fact, we would not even have begun the process if we could not import these drugs."

Shipments of thiopental for other states were stopped and detained in Memphis, where FedEx has its hub, some for as long as several months, FDA documents show.

E-mails obtained by *The Republic* show Arizona corrections officials worked with a local FDA official to have their first batch processed by customs officials in Phoenix instead of Memphis. That shipment sailed through.

Ryan and Flanagan said that it was inspected by a department deputy warden and pharmacist when it arrived in Phoenix to ensure it was human-grade and acceptable.

The second shipment was sent directly from London to Phoenix by a different carrier on Oct. 26 - the same day Jeffrey Landrigan was executed using the first batch - but the FDA forced the Corrections Department to hold it until mid-January as it considered its policies on imports for executions.

Some states with three-drug protocols have already switched to another barbiturate, pentobarbital, a drug similar to what is used to euthanize animals, as a substitute for thiopental.

Ohio uses a single drug to execute its death-row prisoners, and since thiopental became unavailable, switched to pentobarbital. The one-drug protocol sidesteps defense-attorney claims that the executed people could suffer the effects of the other drugs.

"After these two executions, we're looking at going to another protocol," Ryan said. "I'm thinking of a one-drug protocol. Or, if it remains a three-drug protocol, it would be substituting (thiopental) with another barbiturate."

(b)(6)

From: (b)(6)
Sent: Thursday, April 28, 2011 6:21 PM
To: (b)(6)
Subject: FW: Arizona info you requested

(b)(6)

Assistant Special Agent in Charge
U.S. Drug Enforcement Administration
Phoenix Division
(b)(6)

From: (b)(6)
Sent: Tuesday, April 05, 2011 1:58 PM
To: Rannazzisi, Joseph T.
Subject: Arizona info you requested

Joe- Per our conversation, here is the registration information you requested. Also- The state of Arizona only conducts executions at the Arizona State Prison in Florence, AZ.

- ARIZONA STATE PRISON-FLORENCE
  CARSON A., WARDEN
  1305 Butte Avenue
  P.O. Box 629
  Florence, AZ 85232
  Hospital/Clinic
  DEA #FA2203571

(b)(6)

Acting Special Agent in Charge
U.S. Drug Enforcement Administration
Phoenix Division
(b)(6)

(b)(6)

From: (b)(6)
Sent: Thursday, April 28, 2011 6:21 PM
To: (b)(6)
Subject: FW:
Attachments: AZ executes man using controversial lethal injection drug.docx

(b)(6)

Assistant Special Agent in Charge
U.S. Drug Enforcement Administration
Phoenix Division

(b)(6)

From: (b)(6)
Sent: Tuesday, March 29, 2011 12:34 PM
To: Rannazzisi, Joseph T.
Subject:

Joe- Please see the attached article. When you get some time, can you give me a call. I have a couple of concerns regarding what we discussed last night in lieu of this article. Thanks, brother.

(b)(6)

Acting Special Agent in Charge
U.S. Drug Enforcement Administration
Phoenix Division

(b)(6)

AZ executes man using controversial lethal injection drug

by Associated Press (March 29th, 2011 @ 11:06am)

FLORENCE, Ariz. -- A man convicted of killing two people in a 1989 Phoenix convenience store robbery was executed Tuesday despite last-minute arguments by his attorneys who raised questions over one of the lethal injection drugs and said they had raised ``substantial doubt'' about his guilt.

Eric John King's death at the state prison in Florence was the first execution in the state since October and one of the last expected to use a three-drug lethal injection cocktail.

The 47-year-old had maintained his innocence since his arrest and his lawyers fought until the last minute to get his sentence reversed or delayed.

Defense attorney Mike Burke said before the execution that he visited with King on Tuesday morning.

``Although he's very calm, he continues to maintain his innocence,'' Burke told The Associated Press. ``He's done what he can do. All he has left to do is maintain his dignity.''

The Arizona Supreme Court declined to stay King's execution Monday after Burke argued that the state should wait until it enacts its new lethal injection protocol. The U.S. Supreme Court refused to intervene.

Corrections Director Charles Ryan announced Friday that Arizona will switch to using just one drug in an effort to allay any ``perceived concerns'' that sodium thiopental is ineffective, but only after the scheduled executions of King and Daniel Wayne Cook on April 5.

Defense attorney Michael Burke had argued that the Department of Corrections may have engaged in fraud when it imported the sedative from Great Britain by listing it on forms as being for ``animals (food processing),'' not humans.

Arizona Attorney General Tom Horne said the mislabeling resulted from a clerical error.

[redacted]

The drug is part of the three-drug lethal injection cocktail used by nearly all 34 death penalty states, but it became scarce last year after the sole U.S. manufacturer stopped making it.

Some states started obtaining sodium thiopental overseas, and lawyers have argued that potentially adulterated, counterfeit or ineffective doses could subject prisoners to extreme pain.

Texas and Oklahoma recently announced they are switching from sodium thiopental to pentobarbital in their three-drug protocol. Ohio has switched to using only pentobarbital for its executions, and Ryan said that's the drug Arizona might start using.

Burke also was unable to successfully argue that King be granted clemency at a hearing Thursday. Burke had argued that the two key witnesses who testified against King at his trial have changed their stories, that no physical evidence exists and surveillance video used at trial was of extremely poor quality.

Vince Imbordino, a prosecutor with the Maricopa County attorney's office, argued that the photographic evidence was clear and that if jurors didn't believe King was guilty, they wouldn't have convicted him.

King was convicted of fatally shooting security guard Richard Butts and clerk Ron Barman at a Phoenix convenience store two days after Christmas in 1989. Butts and Barman both were married fathers whose families have testified that their deaths in a robbery that netted $72 devastated them.

Shortly before the killings, King had been released from a seven-year prison term on kidnapping and sexual assault charges. Police say King, who was 18 at the time, and another man kidnapped a woman and took her to an abandoned house, where both repeatedly and brutally sexually assaulted her over six hours.

Before he was sentenced in that crime, deputy adult probation officer Lee Brinkmoeller wrote that King had plans to reform himself.

``The defendant's plans for the future are to become a machinist and to have his own car, house, family, and start being able to do things for his mother for all the things she has done for him,'' Brinkmoeller wrote. ``He states that he wants to have his mother be proud of him before she dies and he wants to be somebody.''

Court documents show King had a troubled childhood. Born in a taxi on the way to the hospital in Phoenix, King was one of 12 siblings whose alcoholic, abusive and mentally disturbed father died of a heart attack when King was 11, according to court records.

Records also say King's mother struggled to provide for the children, who were so hungry at times that they tried to catch crawdads in irrigation canals and frequently were without electricity.

King reported to a prison psychiatrist that he had heard voices on and off his entire life, and suffered from anxiety and insomnia.

His son, 20-year-old Eric Harrison, saw King for the first time Thursday at the clemency hearing and asked the board to spare his father.

``This is the first time I've ever seen my dad, ever in life, and I know I love him,'' Harrison said. ``That's my dad. He gave me life. Just don't take him.''

King is the 23rd death row inmates Arizona has executed with the three-drug method since it began using lethal injection in 1993.

The state had previously executed 38 inmates with lethal gas since it started using that method in 1934. Another 28 inmates were executed by hanging between 1910 and 1931.

###

Business Activity	Last Name	Address 1	Address 2	Addl Co Info	City	State	Zip
IMPORTER	ABBOTT LABORATORIES	ABBOTT PARK	ROUTES 43 & 137	ATTN D-209, BLDG AP5	ABBOTT PARK	IL	60064
IMPORTER	CHEMIQUE PHARMACEUTICAL INC	13306 E WHITTIER BLVD			WHITTIER	CA	90602
IMPORTER	PMC SPECIALTIES GROUP INC	501 MURRAY RD			CINCINNATI	OH	45217
IMPORTER	DIAMONDBACK DRUGS	7901 E. MCDOWELL ROAD			SCOTTSDALE	AZ	85257
IMPORTER	HOSPIRA INC	ATTN: PLANT MANAGER	U.S. HIGHWAY 301N		ROCKY MOUNT	NC	27801
IMPORTER	MED-TURN, INC.	4332 EMPIRE ROAD			FORT WORTH	TX	76155
IMPORTER	P D M PHARMATEC INC	225 WEST 34TH STREET	SUITE 1505		NEW YORK	NY	10122

(b)(6)

From: Rannazzisi, Joseph T.
Sent: Monday, April 04, 2011 6:15 PM
To: Boggs, Gary
Subject: Re: seizing AZ DOC thiopental before execution tomorrow?

No. We have not received information that would cause us to seize the drugs from the prison system.

From: Boggs, Gary
Sent: Monday, April 04, 2011 04:56 PM
To: Rannazzisi, Joseph T.
Subject: Fw: seizing AZ DOC thiopental before execution tomorrow?

Fyi

From: (b)(6)
Sent: Monday, April 04, 2011 04:52 PM
To: (b)(6)
Cc: Boggs, Gary; (b)(6)
Subject: FW: seizing AZ DOC thiopental before execution tomorrow?

Gary and (b)(6)

DOJ wants to know ASAP if DEA Phoenix plans to seize AZ DOC's supply of thiopental before a scheduled execution tomorrow (see email strand). (b)(6) reiterated to DOJ that even if we plan to do so, we wouldn't tell the media. Nonetheless, DOJ wants to know so they can be prepared. Please advise ASAP.

Thank you.

(b)(6)
Public Affairs Officer
DEA HQ Public Affairs Section
(b)(6)

From: (b)(6)
Sent: Monday, April 04, 2011 4:32 PM
To: 'laura.sweeney2@usdoj.gov'; (b)(6)
Subject: Re: arizona and thiopental
Importance: High

Laura, (b)(6) can look into it, but even if we plan to take the drugs from AZ, we (obviously) wouldn't tell the reporter.

From: Sweeney, Laura (SMO) [mailto:Laura.Sweeney2@usdoj.gov]
Sent: Monday, April 04, 2011 04:14 PM
To: (b)(6)
Cc:
Subject: RE: arizona and thiopental

Hey guys – anything on this?

1

From: Sweeney, Laura (SMO)
Sent: Monday, April 04, 2011 2:53 PM
To: (b)(6)
Subject: Fw: arizona and thiopental

(b)(5) I will decline comment to the reporter.

From: Finelli, Alisa (SMO)
Sent: Monday, April 04, 2011 02:48 PM
To: Sweeney, Laura (SMO)
Subject: Fw: arizona and thiopental

Do you mind if I forward this one to you?

From: Gobble, Lori (SMO)
Sent: Monday, April 04, 2011 02:43 PM
To: Finelli, Alisa (SMO)
Subject: FW: arizona and thiopental

From: Kiefer, Michael [mailto:michael.kiefer@arizonarepublic.com]
Sent: Monday, April 04, 2011 2:40 PM
To: Gobble, Lori (SMO)
Subject: arizona and thiopental

Dear Ms. Gobble:

Pursuant to our telephone conversation, I am inquiring whether DEA is investigating the Arizona Department of Correction's supply of thiopental sodium for lethal injection.

I understand that the agency has taken possession of the supplies from Georgia, Tennessee and Kentucky, and attorneys in Arizona have asked Attorney general Holder to look into the Arizona supply.

The timing of my request comes a day before Arizona is to use its supply to carry out an execution by lethal injection.

Michael Kiefer
reporter
602-444-8994

Exhibit 3

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION ARNOLD SCHWARZENEGGER, GOVERNOR

OFFICE OF THE SECRETARY
P.O. Box 942883
Sacramento, CA 94283-0001

August 18, 2010

[redacted]
Office of Diversion Control
Drug Enforcement Administration
United States Department of Justice

Dear [redacted]

Thank you again for taking the time to talk and assist us in finding a solution in procuring Sodium Thiopental. As you are well aware, Title 21, United States Code (USC) Controlled Substances Act; Section 952; Importation of Controlled Substances; outlined below are exceptions for importation of Scheduled III controlled substances:

- The Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States.
- During an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate.
- The Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 823 of title 21.
- The Attorney General finds that such controlled substance is in limited quantities exclusively for scientific, analytical or research uses; may be so imported under such regulations as the Attorney General shall prescribe.

The California Department of Corrections and Rehabilitation (CDCR) finds itself unfortunately meeting all of the above exceptions. As we have discussed, John McAuliffe contacted the Diversion Control Units in San Francisco [redacted]; Sacramento ([redacted]); Oakland (Helpline) and Washington D.C. to get assistance in the procurement of Sodium Thiopental, a scheduled III controlled substance.

Sodium Thiopental is one of three chemicals authorized by the state of California for capital punishment by lethal injection. In May 2010 it was reported by the American Society of Health-System Pharmacists that there was a shortage of Sodium Thiopental. This shortage was sparked by a manufacturing problem of Sodium Thiopental as well as a shortage of Propofol (a popular anesthetic used by anesthesiologists) which forced anesthesiologists to further deplete supplies of Sodium Thiopental as a substitute. Additionally, CDCR had contact with numerous compounding pharmacies around the

San Francisco Bay area with the same result. CDCR has located a supply of Sodium Thiopental in Pakistan at [redacted].

CDCR is requesting help from your office to assist with the process of procuring the Sodium Thiopental through the Import/Export Permit Application. We are requesting for the Warden of San Quentin State Prison be permitted to directly order the Sodium Thiopental from Pakistan for delivery to San Quentin State Prison at the following address:

[redacted]

CDCR would be ordering 210 grams or 420 individual package kits of Sodium Thiopental. The state of California's Lethal Injection Regulation, California Code of Regulations, Title 15; Section 3349; calls for a 500-mg/2.5 percent kit (25 mg/mL) combination package with contents of 500-mg of Sodium Thiopental powder and 20mL flip top vial of sterile water to be mixed by appropriate execution team members.

I look forward to talking to you and discussing this matter. If you have any further questions, please contact me at (916) 323-6001.

SCOTT KERNAN
Undersecretary, Operations
California Department of Corrections and Rehabilitation

cc: Benjamin T. Rice Rice, General Council, Legal Affairs
Terri McDonald, Chief Deputy Secretary, Adult Operations
Vince Cullen, Warden (A), San Quentin State Prison

From: Acosta-Hoshall, Christina@CDCR
To: McAuliffe, John@CDCR
Subject: RE: letter from Scott Kernan, Undersecretary, Operations, California Department of Corrections and Rehabilitation regarding procurement of Sodium Thiopental
Date: Thursday, August 19, 2010 12:52:23 PM

The letter has been mailed.

Thank you,
☺

Christina Acosta-Hoshall
Executive Assistant to Terri McDonald, Chief Deputy Secretary, Adult Operations
California Department of Corrections and Rehabilitation
1515 S Street, Suite 502-S
Sacramento, CA 95811
[redacted]

From: McAuliffe, John@CDCR
Sent: Thursday, August 19, 2010 12:40 PM
To: Acosta-Hoshall, Christina@CDCR
Subject: RE: letter from Scott Kernan, Undersecretary, Operations, California Department of Corrections and Rehabilitation regarding procurement of Sodium Thiopental

Christina,
Here is the address for Scott's Letter....

Office of Diversion Control
[redacted]

Thanks
John McAuliffe

From: Acosta-Hoshall, Christina@CDCR [mailto:[redacted]@cdcr.ca.gov]
Sent: Wednesday, August 18, 2010 1:10 PM
To: [redacted]
Cc: Kernan, Scott@CDCR; McAuliffe, John@CDCR
Subject: letter from Scott Kernan, Undersecretary, Operations, California Department of Corrections and Rehabilitation regarding procurement of Sodium Thiopental

SENT ON BEHALF OF SCOTT KERNAN, UNDERSECRETARY, OPERATIONS

Please see the attached letter from Scott Kernan, Undersecretary, Operations, California Department of Corrections and Rehabilitation regarding procurement of Sodium Thiopental.

Thank you,

Christina Acosta-Hoshall
Executive Assistant to Terri McDonald, Chief Deputy Secretary, Adult Operations
California Department of Corrections and Rehabilitation
1515 S Street, Suite 502-S
Sacramento, CA 95811
[redacted]

Exhibit 4

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

DIRECT DIAL
(202) 371-7560
DIRECT FAX
(202) 661-2360
EMAIL ADDRESS
JOHN.BENTIVOGLIO@SKADDEN.COM

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LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

February 24, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am writing on behalf of Andrew Grant DeYoung, who is currently on death row in Georgia. His petition for a writ of certiorari for habeas relief is pending before the U.S. Supreme Court. If his petition is denied, the Georgia Department of Corrections will schedule him for execution by lethal injection in the near future.

As described more fully below, the Georgia Department of Corrections (GDC) appears to have violated the federal Controlled Substances Act (CSA) by failing to register as an importer of the controlled substance (thiopental) used by the GDC in lethal injections and failing to submit a declaration to the Drug Enforcement Administration (DEA) when GDC imported thiopental last year. The GDC's actions call into question the legality and integrity of the process the department uses to administer lethal injections, including in the planned execution of Mr. DeYoung and the other individuals on Georgia's death row. Given these potential violations of federal law, and the implications they raise with respect to pending executions in Georgia, I respectfully urge you to direct appropriate agencies within your Department to conduct a prompt and thorough investigation of these issues.

Execution by Lethal Injection in Georgia

Lethal injection currently is the only authorized means of execution in Georgia.[1] The state legislature has delegated to the GDC responsibility for developing specific protocols for carrying out lethal injections.[2] The current GDC protocols call for the administration, in sequence, of three drugs. First, thiopental (sodium pentothal), a Schedule III nonnarcotic controlled substance, is administered to anesthetize the person. Second, the person is paralyzed by the administration of pancurium bromide. Finally, potassium chloride is injected to stop the person's heart from beating. The proper administration of a full dose of thiopental is critical to ensure that the individual does not experience intense pain that would otherwise result from the administration of drugs that paralyze all voluntary muscles and heart functions.

Federal Laws Prohibit the Importation of Controlled Substances by Unregistered Persons

Since 1970, federal law has imposed a comprehensive set of restrictions on the importation, manufacture, and distribution of controlled substances, with stiff criminal, civil and administrative sanctions for violations of such laws.[3] In enacting these laws, Congress intended to create a "closed" system to ensure controlled substances used in legitimate medical procedures were not adulterated or counterfeit and to prevent the improper diversion of drugs that were prone to abuse.

> The Congress has long recognized the danger involved in the manufacture, distribution, and use of certain psychotropic substances for nonscientific and nonmedical purposes, and has provided strong and effective legislation to control illicit trafficking and to regulate legitimate uses of psychotropic substances in this country.[4]

---

1 *See* Ga. Code Ann. § 17-10-38(a) (2010). While Georgia statutes also authorize execution by the electric chair, the Georgia Supreme Court in 2001 found that use of the electric chair constituted cruel and unusual punishment and struck down the state's use of the method. *See Dawson v. State*, 274 Ga. 327 (Ga. 2001).

2 *See* Ga. Code Ann. § 17-10-44.

3 *See* Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, tit. II, § 101, 84 Stat. 1236, 1242 (1970) (codified at 21 U.S.C. 801 *et seq.*).

4 21 U.S.C. § 801a(1) (Congressional findings and declarations).

A critical component of this system is the strict statutory and regulatory restrictions on the importation of controlled substances. The CSA provides the following prohibition on the import of controlled substances subject to narrow exceptions.

> It shall be unlawful to import into the customs territory of the United States from any place outside thereof . . . *any nonnarcotic controlled substance in schedule III* . . . unless such nonnarcotic controlled substance--
>
> (1) is imported for medical, scientific, or other legitimate uses, *and*
>
> (2) is imported pursuant to such notification, or declaration, or in the case of any nonnarcotic controlled substance in schedule III, such import permit, notification, or declaration, as the Attorney General may by regulation prescribe . . . .

21 U.S.C. § 952(b) (emphases added); *see also* 21 U.S.C. § 954(2) ("A controlled substance in schedule II, III, or IV may be so imported, transferred or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General.").

Pursuant to the CSA, the Attorney General has promulgated regulations enforced by the DEA requiring that "[n]o person shall import or cause to be imported any non-narcotic controlled substance listed in Schedule III . . . unless and until such person is properly registered under the Act (or exempt from registration) and has filed an import declaration to do so with the Administrator, pursuant to § 1312.18 of this part." 21 C.F.R. § 1312.11(b)(2011). The CSA also makes it unlawful to "possess, manufacture, distribute, or dispense" controlled substances absent a properly issued registration by the DEA. 21 U.S.C. § 822(a)-(b); *see also* 21 C.F.R. § 1312.11(b).

The Georgia Department of Correction's Importation of Thiopental in 2010

Based on records provided by GDC in response to a request filed by attorneys for Emmanuel Hammond under Georgia's Open Records Act,[5] it appears that on June 24, 2010, Dream Pharma Ltd. ("Dream Pharma"), a pharmaceutical wholesaler/distributor in London, England, shipped one package of twenty-five vials

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[5] The Open Records Act request, and the documents provided by GDC in response thereto (including a cover letter from the GDC's General Counsel), are attached in Appendix A.

of thiopental sodium for the GDC to a pharmacy somewhere in the United States.[6] On June 28, 2010, the thiopental arrived in Memphis, Tennessee, where Customs detained it pending review by the FDA.[7]

Dream Pharma appears to be a closely held corporation run by a husband and wife. According to press reports, their only location is rented space at the rear of a driving school.[8] I have found no evidence (in the GDC-produced documents or otherwise) that the company is registered to export controlled substances. Moreover, the export of thiopental for non-medical purposes has recently been prohibited in the UK.[9]

On July 14, 2010, the Director of Procurement for the GDC sent an email to a recipient, whose name has been redacted, reporting that he had made inquiries with "the POC" as to whether "we could purchase the drug Thiopental directly from distributor [sic]."[10] Later that evening, the Director of Procurement emailed Dream Pharma Ltd. to "inquir[e] if the Department could purchase Thiopental directly from [DreamPharma]."[11] The email explained that the GDC "uses the drug for capitol [sic] punishment. We recently purchased the drug through [redacted] and shipment [sic] has not arrived."[12]

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[6] While the GDC attempted to redact Dream Pharma's name from the documents that it disclosed, the name is partially readable in the GDC's email correspondence with Dream Pharma (Appendix A at 0037), is unredacted on the invoice for the shipment (Appendix A at 0051, 0056), and is unredacted on the international wire transfer paying for the purchase of the thiopental (Appendix A at 0053).

[7] According to documents obtained from the Food and Drug Administration, the shipment was "[r]eleased after Detention" on August 12, 2010. The Georgia Diagnostic and Classification Prison's inventory log notes the receipt of twenty-five vials of thiopental sodium on August 27, 2010. Appendix A at 0005.

[8] *See, e.g.*, Steven Swinford, *British Businessman Supplied US Prison With Lethal Injection Drugs*, THE TELEGRAPH, (Jan. 7, 2011, 7:30 AM), http://www.telegraph.co.uk/news/uknews/8243959/British-businessman-supplied-US-prison-with-lethal-injection-drugs.html; *see also* DREAM PHARMA LTD., http://www.dreampharma.com (last visited Feb. 24, 2011) (Dream Pharma's address).

[9] *See* Swinford, *supra* note 8.

[10] Appendix A at 0020.

[11] Appendix A at 0019, 0041 (email from Director of Procurement to Dream Pharma of Jul. 12, 2010).

[12] *Id.*

An agent of Dream Pharma responded the following morning, stating that he was "more than happy to assist."[13] The Director of Procurement sought approval to make the purchase, ultimately receiving authorization within an hour from the Assistant Commissioner, Chief of Staff of the GDC, who admonished: "Yes. Make it happen. Get a good quantity but ensure it has an extended shelf life!"[14]

On July 16, 2010, the Director of Procurement emailed Dream Pharma that "GDC would like to make purchase of Thiopental. Request attached on GDC letterhead as requested."[15] An agent of Dream Pharma responded that same day with confirmation that he had received the GDC's purchase order and would "order the goods on Monday morning [July 19, 2010] and hopefully . . . will be able to make shipment to you by the end of the week."[16] Later that day, the agent cautioned the Director of Procurement that "[i]t is your responsibility to get the goods through the US customs. If for some reason the products get's [sic] held at the customs and was not released, we cannot bring the products back to UK. It would need to be destroyed."[17]

On July 21, 2010, the GDC transferred £183.76 (pounds sterling, the equivalent of $340.41) to Dream Pharma through an international bank wire. Appendix A at 0052-0053. That same day, Dream Pharma shipped two packages of twenty-five vials of thiopental directly to the Georgia Diagnostic and Classification Prison in Jackson, Georgia – the facility that houses Georgia's death row.[18] The invoice and label for the shipment identify the contents as "*Pharmaceuticals Not Restricted.*"[19] According to the inventory log maintained by the Georgia Diagnostic and Classification Prison, the prison received these fifty vials of thiopental on July 29, 2010.[20]

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[13] Appendix A at 0017-18 (email from Dream Pharma to Director of Procurement of July 15, 2010).

[14] Appendix A at 0017 (email from Asst. Commissioner of July 15, 2010).

[15] Appendix A at 0022 (email from Director of Procurement to Dream Pharma of Jul. 16, 2010). The documents disclosed by GDC contain what appear to be several drafts of this request, but, given the extent of the redactions, it is impossible to determine which version accompanied the email.

[16] *Id.* (email from Dream Pharma to Director of Procurement of July 16, 2010).

[17] *Id.*

[18] Appendix A at 0051.

[19] Appendix A at 0051, 0054 (emphasis added).

[20] Appendix A at 005.

The GDC's Importation and Possession of Thiopental Appears to Have Violated the Federal Controlled Substances Act

Based on the foregoing, it appears that: (1) the GDC imported thiopental directly from Dream Pharma in July 2010, (2) the GDC was not registered with DEA as an importer of non-narcotic controlled substances when the GDC imported thiopental from Dream Pharma, (3) the GDC did not, in connection with its importation of thiopental from Dream Pharma, provide a declaration of importation to DEA, and (4) GDC was not at the time of importation – and is not today – registered to possess a non-narcotic controlled substance.

The importation of thiopental, absent a valid registration, violated federal law

Based on a variety of documents, it appears that GDC has violated the federal CSA by importing thiopental without proper registration or notification. Specifically, the Federal Defender's Office for the Northern District of Georgia filed a request under the state's Open Records Act for "[a]ny registration by your office . . . with the United States Drug Enforcement Administration (DEA) for the importation of controlled substances, including but not limited to [thiopental], from foreign countries."[21] The GDC replied that "[t]he Department does not possess documentation responsive to each of [the Federal Defender's Office] requests." The GDC's response also stated that "[t]o the extent that the Department has documentation responsive to your requests, the [redacted] documents are enclosed for your review."[22] None of the documents provided pursuant to the request included the registration, application for registration, or evidence of a waiver of or exemption from the registration to import Schedule III controlled substances.

The GDC's failure to declare the importation of thiopental violated federal law

It also appears that the GDC failed to declare its importation of thiopental, as required by 21 U.S.C. § 954(2) ("A controlled substance in schedule II, III, or IV may be so imported, transferred or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General."). The regulations promulgated by the Attorney General require importers of non-narcotic Schedule III controlled substances, such as thiopental, to file an import declaration to the DEA, 21 C.F.R. § 1312.11(b), including the submission of DEA

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[21] The Open Records Act request is attached at Appendix B.

[22] The documents produced by the GDC are attached at Appendix C.

Form 235 in quintuplicate no later than fifteen days prior to the proposed date of importation. *See* 21 C.F.R. § 1312.18(b)-(c). None of the documents obtained under Georgia's Open Records Act provides any indication that the GDC properly declared its importation of thiopental.

The GDC appears to lack authority to possess thiopental, in violation of federal law

The GDC has produced a document that appears to be a DEA-issued registration to possess Schedule III *narcotics*.[23] This registration, however, does not appear to authorize the GDC to possess, dispense, or distribute Schedule III *non-narcotic* substances. As noted above, thiopental is a non-narcotic controlled substance. Accordingly, it appears GDC's possession of thiopental may be unlawful under 21 U.S.C. § 822(a) and 21 C.F.R. § 1301.11(9) ("Every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration unless exempted by law or pursuant to §§ 1301.22 through 1301.26.").

The Department of Justice Should Investigate the GDC's Actions and Take Appropriate Steps if the GDC Has Violated Federal Law

Based on the information summarized above, I respectfully request that you direct the DEA (and/or other appropriate agencies) to conduct a prompt and thorough investigation of these issues. Without the safeguards of the federal closed system created by Congress, illegally imported thiopental may be adulterated, counterfeit, or otherwise ineffective in providing adequate sedation. It is likely that illegally imported or possessed thiopental will be used in the execution of Mr. DeYoung and other individuals on Georgia's death row.

If such an investigation confirms that GDC has violated federal law through its unlawful importation of thiopental from Dream Pharma, the situation presents "an imminent danger to the public health or safety." 21 C.F.R. § 1301.36(e). When such danger exists, the DEA may revoke or suspend the violator's registration to possess controlled substances and require that all controlled substances in the violator's possession are delivered to the DEA. *See* 21 C.F.R. § 1336(e)-(f). The DEA also can direct the GDC to "[d]eliver to the nearest office of the Administration or to authorized agents of the Administration" all of the particular controlled substance or substances affected by the revocation or suspension which are in his/her possession. or "[p]lace all of such substances under seal as described in sections 304(f) or

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[23] *See* Appendix A at 0001.

958(d)(6) of the Act (21 U.S.C. § 824(f) or 958(d)(6))." 21 C.F.R. § 1301.36(f). Both such actions would be appropriate if GDC is in violation of federal law described above.

* * * * *

I appreciate your attention to this matter. If you or a member of your staff have questions or need more information, please do not hesitate to contact me.

Sincerely,

John T. Bentivoglio

cc: Michele Leonhart
Administrator
Drug Enforcement Administration

Carl Humphrey, Warden
Georgia Diagnostic and Classification Prison

Gretchen M. Stork
Federal Defender Program, Inc.

Exhibit 5

Equal Justice Initiative
122 Commerce Street
Montgomery , Alabama 36104

April 22, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing on behalf of Jason Oric Williams and other condemned inmates on Alabama's death row. Mr. Williams is scheduled to be executed on May 19, 2011, and another execution is set for June 16, 2011. As explained in more detail below, it recently came to our attention that the Alabama Department of Corrections appears to have violated the federal Controlled Substances Act by obtaining sodium thiopental from the State of Tennessee, whose supply has been seized by the Drug Enforcement Administration due to concerns that it was illegally obtained from overseas.

Alabama, like most states that administer lethal injection as a form of execution, has to date employed a three drug cocktail with the lethal dose being a specified amount of sodium thiopental. This protocol was used as recently as March 31, 2011, during the execution of William Glen Boyd. As your office is aware, last year, many states experienced a shortage of the drug after Hospira Inc., the sole U.S. supplier of sodium thiopental, experienced problems with its raw material providers. Many states desperately sought to acquire unexpired doses.

Mindful of this shortage, prior to the scheduled execution date of November 4, 2010, counsel for Phillip Hallford, an Alabama death row inmate, sent a letter to the Alabama Department of Corrections inquiring as to the source and expiration date of its supply of sodium thiopental. Mr. Hallford's attorneys were informed by counsel for the Alabama Department of Corrections that it was in possession of a supply of sodium thiopental from

Hospira, Inc., which was not due to expire until three weeks ago, on April 1, 2011.[1]

In January 2011, a time that Hospira, Inc. previously indicated it would have renewed supplies of sodium thiopental, the company issued a release, explaining that it was discontinuing its production of sodium thiopental. Because overseas importation of sodium thiopental is highly restricted under federal law and there were no domestic suppliers of the drug, on January 25, 2011, thirteen states, including Alabama, sent a letter to your office requesting assistance with the procurement of sodium thiopental, explaining that their supplies were low and would soon be exhausted.[2] Having been informed that the federal government was experiencing the same problem as the states, several state Departments of Corrections sought to obtain the drug in violation of federal law by either importing it directly from foreign countries or purchasing it from United States pharmacies who had done so.

Federal law imposes a comprehensive set of restrictions on the importation of non-narcotic controlled substances, such as sodium thiopental. In particular, these regulations prohibit persons or entities from importing such substances unless the individual or the entity is registered with the DEA as an importer and provides a declaration pertaining to any such importation. See 21 U.S.C. § 954(2) ("A controlled substance in schedule II, III, or IV may be so imported, transferred, or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General."); 21 U.S.C. § 822 (a)-(b) (it is unlawful to "possess, manufacture, distribute, or dispense" controlled substances absent a properly issued registration by the DEA); 21 C.F.R. § 1312.11(b) ("[n]o person shall import or cause to be imported any non-narcotic controlled substance listed in Schedule III . . . unless and until such person is properly registered under the Act (or exempt from registration) and has filed an import declaration to do so with the Administrator."). The goal of these regulations is to ensure the integrity of imported substances and safeguard against the use of adulterated or counterfeit ones.

Concerned with the illegal importation of sodium thiopental, the Drug Enforcement Administration recently seized several states' supplies. Among them was Tennessee.[3]

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[1] Appendix A, Letter from Kim Thomas to Andrew Kantra (with attached copy of vial bearing April 1, 2011, expiration date).

[2] Appendix B, Letter from Thirteen States to Attorney General Eric Holder (dated January 25, 2011).

[3] Appendix C, Public Record obtained from Tennessee Department of Corrections (U.S. Department of Justice, DEA Receipt detailing the seizure of 44 vials of thiopental

Undersigned counsel just recently received documentation from the State of Tennessee which indicated that Alabama's most recent, and only known to be unexpired, batch of sodium thiopental was obtained from Tennessee's Department of Corrections on March 15, 2011.[4] Because it was not until March 22, 2011, that the DEA seized Tennessee's supply of sodium thiopental, Alabama's supply seemingly derives from the same batch. The unlawful acquisition of such unregulated narcotics increases the likelihood that they are adulterated, counterfeit, or otherwise ineffective.

Given Mr. Williams' imminent execution date, we request that your office and the Drug Enforcement Administration investigate this matter expeditiously and thoroughly. As occurred in Tennessee, we ask that all necessary steps be taken to prevent the State from utilizing or possessing what appear to be unlawfully obtained drugs.

We appreciate your time and attention to this matter. If you or a member of your staff have any questions or are otherwise in need of assistance in handling this matter, please do not hesitate to contact our office.

Sincerely,

Bryan Stevenson
Executive Director, Equal Justice Initiative

Angela Setzer
Senior Attorney, Equal Justice Initiative

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injection).

[4] Appendix C, Public Record obtained from Tennessee Department of Corrections (invoice detailing that 8 grams of thiopental injection were received by the Alabama Department of Corrections on March 15, 2011).

cc: Michele Leonhart
Administrator
Drug Enforcement Administration

Jimmy S. Fox III
Special Agent in Charge, New Orleans Division
Drug Enforcement Administration

Rodney Benson
Special Agent in Charge, Atlanta Division
Drug Enforcement Administration

APPENDIX A

State of Alabama
Department of Corrections

Alabama Criminal Justice Center
301 South Ripley Street
P. O. Box 301501
Montgomery, AL 36130-1501
(334) 353-3883

BOB RILEY
GOVERNOR

RICHARD F. ALLEN
COMMISSIONER

VIA FACSIMILE TRANSMISSION AND U.S. MAIL

October 26, 2010

Andrew E. Kantra, Esq.
300 Two Logan Square
Philadelphia, PA 19103-2799

Re: Philip D. Hallford Z-474

Dear Mr. Kantra,

I have reviewed your October 24, 2010, letter regarding your client, death row inmate Phillip Hallford. Please be advised that this Department has a sufficient supply of unexpired sodium thiopental available to perform the execution scheduled for November 4, 2010. This supply is from an FDA approved manufacturer- Hospira, Inc. and bears the expiration date of 1APR2011. As an officer of the Court, I represent to you that the enclosed copy is of the packaging for the sodium thiopental which will be used for Hallford's execution. If you should require any further infomation, please let me know as soon as possible so that we may provide this information to Judge Steele, the United States District Judge who has previously handled Hallford's challenges.

Sincerely,

Kim T. Thomas
General Counsel

cc: J. Clayton Crenshaw

[redacted]

One/NDC 0409-6435-01

PENTOTHAL®* 1g
and Sterile Water
for Inj., USP 50 mL

C III

℞ only

*THIOPENTAL SODIUM FOR INJECTION, USP

WARNING: MAY BE HABIT FORMING.

Combination Package
Contains no bacteriostat. Use reconstituted Pentothal within 24 hours.

Hospira

HOSPIRA, INC., LAKE FOREST, IL 60045 USA

LOT [redacted]
EXP. APR2011

[redacted]

APPENDIX B

A Communication From The Chief Legal Officers Of The Following States
Alabama * Colorado * Delaware * Florida * Idaho * Mississippi * Missouri * Nevada * Oregon
* Tennessee * Utah * Washington * Wyoming

January 25, 2011

Attorney General Eric Holder
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Holder:

The majority of jurisdictions in the United States that include the death penalty as an authorized punishment in certain cases, including the Federal Government, provide for lethal injection as the prescribed method of execution. In a majority of those capital-crime jurisdictions, again including the Federal Government, it is the only prescribed method of execution. We, the Attorneys General of the States listed below, seek your assistance in resolving an issue concerning the procurement of one of the prescribed medications used in lethal injection protocols.

The protocol used by most of the jurisdictions employing lethal injection includes the drug sodium thiopental, an ultra-short-acting barbiturate. Sodium thiopental is in very short supply worldwide and, for various reasons, essentially unavailable on the open market. For those jurisdictions that have the drug available, their supplies are very small – measured in a handful of doses. The result is that many jurisdictions shortly will be unable to perform executions in cases where appeals have been exhausted and Governors have signed death warrants.

Therefore, we solicit your assistance in either identifying an appropriate source for sodium thiopental or making supplies held by the Federal Government available to the States. We also request an opportunity to discuss this important matter with you.

We look forward to hearing from you.

Sincerely,

John Kroger
Oregon Attorney General

Luther Strange
Alabama Attorney General

John Suthers
Colorado Attorney General

Pam Bondi
Florida Attorney General

Jim Hood
Mississippi Attorney General

Catherine Cortez Masto
Nevada Attorney General

Mark Shurtleff
Utah Attorney General

Bruce Salzburg
Wyoming Attorney General

Joseph Biden III
Delaware Attorney General

Lawrence Wasden
Idaho Attorney General

Chris Koster
Missouri Attorney General

Robert Cooper
Tennessee Attorney General

Rob McKenna
Washington Attorney General

APPENDIX C

3/8/11 Chemical Inventory
- 100 VIALS of Pancuronium Bromide
- 50 - 10 mL Bottles 50 - 2 mL Bottles
- Potassium Chloride - 150 Bottles
- 20 mL Bottles =
- 20 Boxes of Pentothal
- 60 Bottles of Thiopental Injection

3/1/11 Chemical Inventory
- Pancuronium 50 VIALS 4 mg/2 mL
- Pancuronium 50 VIALS 10 mL
- Potassium Chloride - 75 bottles
- Pentothal 20 Boxes Removed - Expired 3/1/11
- Thiopental Injection 75 bottles

CORRECTION = 60 Bottles of Thiopental Injected.
3 Boxes - 2 boxes of 25 | Box of 10 = 60 total

3/9/11 Chemical Inventory
- Pancuronium 50 VIALS 4 mg/2 mL
- Pancuronium 50 VIALS 10 mL
- Potassium Chloride 75 Bottles
- Thiopental Injection 60 bottles

3/15/11	16 BOTTLES OF THIOPENTAL INJECTION		
	TO OKLAHOMA DEPT. OF CORRECTIONS		
	(ON HAND)		
	PANCURONIUM	50 VIALS	4 mL | 2 mL
	PANCURONIUM	50 VIALS	10 mL
	POTASSIUM CHLORIDE	75 BOTTLES	
	THIOPENTAL INJECTION	44 BOTTLES	ON HAND

STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
NASHVILLE, TENNESSEE 37243-0471
TELEPHONE (615) 350-3100 | FAX (615) 350-3400

Received by:

Alabama Department of Correction

8 grams Thiopental Injection

Signed: [signature]

Date: 3/15/11

U.S. DEPARTMENT OF JUSTICE - DRUG ENFORCEMENT ADMINISTRATION

RECEIPT FOR CASH OR OTHER ITEMS

TO: (Name, Title, Address (Including ZIP CODE), if applicable)	FILE NO.	G-DEP IDENTIFIER
DAVID MILLS WARDEN TN DEPT. OF CORRECTIONS 7575 COCKRILL BEND	FILE TITLE	
	DATE 3-22-11	

DIVISION/DISTRICT OFFICE
NASHVILLE, TN 37209

I hereby acknowledge receipt of the following described cash or other item(s), which was given into my custody by the above named individual.

AMOUNT or QUANTITY	DESCRIPTION OF ITEM(S)	PURPOSE (If Applicable)
1X25	TRIPENTYL INJ BP 500MG	SEIZURE
1X19	TRIPENTYL INJ BP 500MG	"
1	INJECTOR AUTOMATIC	"
	DEPT OF CORRECTIONS dtd 3/15/11	"

RECEIVED BY (Signature)

NAME AND TITLE (Print or Type)
LARRY D. LOCKHART
DIVERSION CAS

WITNESSED BY (Signature)

NAME AND TITLE (Print or Type)
Justin Wood, DI

FORM DEA-12 (8-02) *Previous editions obsolete*

Electronic Form Version Designed in JetForm 5.2 Version

DEA-41 (8-88) Pg. 2

	NAME OF DRUG OR PREPARATION Registrants will fill in Columns 1,2,3, and 4 ONLY.	Number of Containers	CONTENTS (Number of grams, tablets, ounces or other units per container)	Controlled Substance Content, (Each Unit)	FOR DEA USE ONLY DISPOSITION	QUANTITY GMS.	MGS.
	1	2	3	4	5	6	7
17							
18							
19							
20							
21							
22							
23							
24							

The controlled substances surrendered in accordance with Title 21 of the Code of Federal Regulations, Section 1307.21, have been received in 2 packages purporting to contain the drugs listed on this inventory and have been: ** (1) Forwarded tape-sealed without opening; (2) Destroyed as indicated and the remainder forwarded tape-sealed after verifying contents; (3) Forwarded tape-sealed after verifying contents.

DATE _____ DESTROYED BY: _____

** *Strike out lines not applicable.*

WITNESSED BY: _____

INSTRUCTIONS

1. DO NOT SEND DRUGS TO ANY DRUG ENFORCEMENT ADMINISTRATION (DEA) OFFICE WITHOUT PRIOR WRITTEN APPROVAL. Drugs are to be destroyed by: (1) shipment to a reverse distributor registered by DEA (may not require the use of this form); (2) the registrant, according to state and local laws, rules and regulations; or (3) the specific instructions of your area Drug Enforcement Administration Office.
2. List the name of the drug in column 1, the number of containers in column 2, the size of each container in column 3, and in column 4 the controlled substance content of each unit described in column 3; e.g., morphine sulfate tabs., 3 pkgs., 100 tabs., 1/4 gr. (16 mg.) or morphine sulfate tabs., 1 pkg., 83 tabs., 1/2 gr. (32mg.), etc.
3. All packages included on a single line should be identical in name, content and controlled substance strength.

PRIVACY ACT INFORMATION

AUTHORITY: Section 307 of the Controlled Substances Act of 1970 (PL 91-513).
PURPOSE: To document the surrender of controlled substances for disposal.
ROUTINE USES: This form is required by Federal Regulations for the surrender of Controlled Substances. Disclosures of information from this system are made to the following categories of users for the purposes stated.
A. Other Federal law enforcement and regulatory agencies for law enforcement and regulatory purposes.
B. State and local law enforcement and regulatory agencies for law enforcement and regulatory purposes.
EFFECT: Failure to document the surrender of unwanted Controlled Substances may result in prosecution for violation of the Controlled Substances Act.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a Collection of information unless it displays a valid OMB control number. The valid OMB control number for this Collection of information is 1117-0007. The time required to complete this information collection is estimated to average 30 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

OMB Approval No. 1117-0007

U. S. Department of Justice - Drug Enforcement Administration

REGISTRANTS INVENTORY OF DRUGS SURRENDERED

PACKAGE NO.

The following schedule is an inventory of controlled substances which is hereby surrendered to you for proper disposition, per your approval.

FROM: *(Include Name, Street, City, State and ZIP Code in space provided below.)*

Tennessee Department of Corrections
7575 Cockrill Bend Boulevard
Nashville, TN 37209-1057

Signature of applicant or authorized agent

WARDEN

Registrant's DEA Number

Registrant's Telephone Number

NOTE: REGISTERED MAIL (Return Receipt Requested) IS REQUIRED FOR SHIPMENTS OF DRUGS VIA U. S. POSTAL SERVICE.

NAME OF DRUG OR PREPARATION Registrants will fill in Columns 1, 2, 3, and 4 ONLY.	Number of Containers	CONTENTS *(Number of grams, tablets, ounces or other units per container)*	Controlled Substance Content, *(Each Unit)*	FOR DEA USE ONLY DISPOSITION	QUANTITY GMS.	QUANTITY MGS.
1	2	3	4	5	6	7
1 Thiopental Inj. BP 500mg	1	25				
2 Thiopental Inj. BP 500mg	1	19				
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						

FORM DEA-41 (8-02) *Previous editions are obsolete*

See instructions on reverse (page 2) of form.

STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
NASHVILLE, TENNESSEE 37209-1048
TELEPHONE (615) 350-3100 * FAX (615) 350-3400

RECEIVED FROM RIVERBEND MAXIMUM SECURITY INSTITUTION

44 VIALS THIOPENTHAL

Signed: Larry D. Lockett **Date:** 3/22/2011

Exhibit 6

United States General Accounting Office

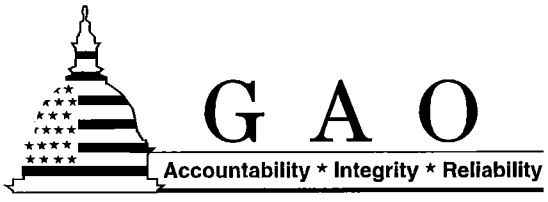
GAO

Report to the Attorney General

November 1999

SEIZED DRUGS AND WEAPONS

DEA Needs to Improve Certain Physical Safeguards and Strengthen Accountability

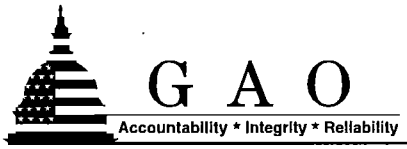


GAO/AIMD-00-17

Contents

Abbreviations

AAPC	Accounting and Auditing Policy Committee
ATF	Bureau of Alcohol, Tobacco, and Firearms
DEA	Drug Enforcement Administration
DOJ	Department of Justice
FASAB	Federal Accounting Standards Advisory Board
FBI	Federal Bureau of Investigation
JFMIP	Joint Financial Management Improvement Program
NEDS	Non-Drug Evidence System
OIG	Office of Inspector General
SFFAS	Statement of Federal Financial Accounting Standard
STRIDE	System to Retrieve Information from Drug Evidence



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

Accounting and Information
Management Division

B-283521

November 30, 1999

The Honorable Janet Reno
The Attorney General

Dear Madam Attorney General:

Since 1990, we have periodically reported on government operations that we have identified as "high risk" because of their greater vulnerabilities to waste, fraud, abuse, and mismanagement. One of these operations is the asset forfeiture program operated by the Department of Justice (DOJ). As we reported in January 1999, although some improvements have been made to the program since we first designated it as a high-risk program in 1990, significant problems remain and continued oversight is necessary to ensure that policies and procedures are followed and that adequate safeguards are in place.[1]

Related to asset forfeiture, DOJ operations often involve the seizure, custody, and disposition of evidence that is used by federal prosecutors. A critical support function is controlling evidence to help ensure that federal cases are not compromised or weakened by challenges made by the defense about the existence, completeness, or handling of evidence, or its ties to defendants. Seized property, including items such as drugs and weapons, are subject to forfeiture and typically remain in the custody of the seizing agency until they are approved for final disposition. In fiscal year 1998, DOJ's Drug Enforcement Administration (DEA) reported that its agents seized over 275,000 kilograms[2] of illegal drugs.

This report focuses on DEA's controls over seized drugs and weapons. There is an inherent risk of theft, misuse, and loss of drugs and weapons due to the fact that such evidence typically has a market or "street" value. In addition, evidence can remain in DEA custody for significant amounts of time due to long-term investigations. Another factor increasing the risk is changes in the custody of the evidence as DEA often conducts its

[1] *Major Management Challenges and Program Risks: Department of Justice* (GAO/OCG-99-10, January 1999).

[2] One kilogram equals 1,000 grams and is the equivalent of approximately 2.2 pounds. About 453.6 grams is the equivalent of 1 pound.

operations with other law enforcement agencies, which can result in evidence being transferred from one agency to another.

Given this inherent risk, our audit objectives were to determine whether DEA (1) put in place physical safeguards to control access to and use of drug and weapon evidence and (2) maintained adequate accountability over such evidence. To accomplish these objectives, we interviewed officials from DEA headquarters and selected division offices and laboratories concerning various aspects of the seizure, storage, and disposal of seized drugs and weapons. We reviewed DEA's *Laboratory Operations Manual* and *Agents Manual* for policies and procedures pertaining to the processes used to seize, account for, safeguard, and dispose of drugs and weapons. Based on documentation provided by DEA headquarters, we selected four division offices and corresponding laboratories with large volumes of drug seizure activity–Dallas, Texas (South Central Laboratory); Miami, Florida (Southeast Laboratory); New York, New York (Northeast Laboratory); and San Diego, California (Southwest Laboratory)–to perform testing of these policies and procedures.

To determine if issues we identified at the four selected division offices and laboratories are indicative of more systemic concerns, we (1) reviewed reports issued by DOJ's Office of Inspector General (OIG) related to laboratory operations[3] and (2) requested and reviewed a copy of the sections of the most recent DEA internal inspection reports for 20 of DEA's 21 division offices[4] and for the 8 laboratories that cover procedures and internal controls related to seized drugs and weapons. These inspections were performed from March 1996 through August 1998. Because we received the sections of the internal inspection reports near the end of our fieldwork, we did not follow-up with the division offices or laboratories to determine the extent to which noted deficiencies had been corrected. According to DEA officials, the reported deficiencies have been addressed; however, as noted throughout this report, we identified instances where weaknesses similar to those included in the internal inspection reports existed at the locations we visited.

[3]*Drug Enforcement Administration's Laboratory Operations* (DOJ OIG, 95-18, May 1995) and *Retention of Drug Evidence in Drug Enforcement Administration Laboratories* (DOJ OIG, I-96-02, February 1996).

[4]The El Paso Division Office was established after the completion of our fieldwork.

We performed our work in accordance with generally accepted government auditing standards from August 1998 through August 1999. See appendix I for a more detailed discussion of our scope and methodology. We requested written comments on a draft of this report from the Attorney General or her designee. The Acting DEA Administrator provided written comments which are discussed in the "Agency Comments and Our Evaluation" section of this report and reprinted in appendix II. DEA also provided technical suggestions or supplemental information that we took into consideration while finalizing our report.

Results in Brief

Physical safeguards over drug and weapon evidence, which include adequate storage facilities and control procedures, are essential for guarding against theft, misuse, and loss of such evidence and securing it for federal prosecutors. Each of the four laboratories and division offices we visited had physical safeguards in place, that, if operated effectively, would help control access to and use of drug and weapon evidence. However, we found instances of inadequate packaging of drug and weapon evidence and overcrowded drug vaults that could increase the potential for theft, misuse, and loss. Further, we found that certain requirements, such as chemists returning drug evidence to the vault within 5 working days after analysis and laboratories destroying drugs within 90 days of receiving authorization to destroy, were not always met. Similar issues were reported in the internal inspection reports provided to us by DEA that covered DEA inspections performed from March 1996 through August 1998.

Drug and weapon evidence must also be accounted for completely, accurately, and promptly to help ensure that such evidence is not compromised for federal prosecution purposes and is protected against the risk of theft, misuse, or loss. Based on our visits to four selected DEA laboratories and division offices, we found weaknesses related to DEA's accountability over drug and weapon evidence. The weaknesses included (1) incomplete and missing drug evidence documentation, including chain of custody documentation, (2) inaccurate recordkeeping of drug and weapon evidence, and (3) improper accounting for drug weights, including unverified and unexplained weight differences in drug exhibits. For example, DEA policy requires that chemists verify the weight of drug evidence against the weight reported by the submitting agent upon receipt of the evidence and obtain a witness' verification if a difference above a certain threshold exists. For 28 of the 86 drug exhibits we reviewed that had weight discrepancies above the threshold set forth in DEA's policy,

chemists did not obtain the appropriate verification before opening and analyzing the evidence.

DEA's internal inspection teams also reported instances of missing documentation and improper recordkeeping in their reports covering inspections performed from March 1996 through August 1998. Notwithstanding these problems, DEA officials at the four laboratories and division offices we visited were able to locate each item selected for our testing that was in storage in evidence vaults or warehouses, and for those items not in storage, they provided documentation supporting the current location or the status of the item. We are making recommendations to address the above issues.

In commenting on this report, DEA concurred that the accountability and safeguarding of evidence is of critical importance and said it will take the appropriate steps to reinforce its adherence to existing policies or to implement new policies relating to 11 of our 12 recommendations. However, DEA stated that issues identified in the report do not appear to be systemic weaknesses and were found in areas where redundant controls are in place to ensure the integrity of evidence is maintained at all time. We disagree with DEA and, as discussed in this report, identified several issues which we consider to be of a more severe nature at all, or almost all, of the locations that we visited and for which redundant controls did not exist to compensate for the deficiencies. In addition, DEA officials indicated that the reported deficiencies identified by their internal inspections performed prior to our review had been addressed. However, as noted throughout this report, we identified weaknesses that were the same or similar to ones identified during DEA's internal inspections.

Further, in several comments related to the significance of certain discrepancies, DEA stated that all exhibits of drug evidence examined by GAO were found to be in a sealed condition. However, certain conditions identified by us during our testing and included in this report diminish the effectiveness of DEA's sealing of evidence procedures.

Background

DEA plays a leading role in combating the production and distribution of illegal drugs. Under DOJ, DEA's mission is to enforce controlled substance laws and bring individuals and organizations that violate these laws into the justice system. To carry out its mission, DEA operates 21 domestic division offices and 77 foreign offices in 56 different countries. DEA also has eight laboratories located throughout the country, that conduct drug analyses for

DEA and other law enforcement agencies and maintain thousands of exhibits from investigations.

In fiscal year 1998, DEA reported that its agents seized over 275,000 kilograms of drugs, including marijuana, cocaine, and heroin (see table 1) and approximately 280,000 kilograms were maintained at DEA facilities as of September 30, 1998.[5] When drug evidence is seized, the agent maintains custody of the drugs until sending them either via mail or hand delivery to the laboratory for testing. Agents seal, label, and weigh the drug evidence, as well as assign consecutive exhibit numbers to such evidence acquired under a given case number. All drug evidence seized in DEA-controlled investigations must be submitted to a DEA laboratory for safekeeping and analysis. If the seizure involves over 10 kilograms of marijuana, only a sample amount is sent to the laboratory, with the remainder being stored in a secured area by the division offices. For large "bulk" narcotics seizures, DEA informs the appropriate U.S. Attorney's Office in writing within 5 days that amounts above a certain threshold will be destroyed after 60 days from the date notice is provided of the seizure, unless a written request not to destroy the excess is received.[6]

[5]DEA employees are drug tested before they are hired and are subject to additional random drug testing during employment at DEA.

[6]Drug seizures over certain threshold amounts are considered "bulk" seizures. Bulk seizure thresholds vary depending on the type of drug. For example, the threshold amount for heroin is 2 kilograms, while the threshold for cocaine is 10 kilograms. The U.S. Attorney's Office may request keeping amounts in excess of the threshold if it believes possession of the drugs may affect the legal proceedings.

Table 1: Seized Drug Activity for the Year Ended September 30, 1998

(in kilograms)

Drug type	Beginning balance	Additions	Deletions	Ending balance
Marijuana	29,536	239,515	195,288	73,763
Cocaine	196,722	31,649	38,704	189,667
Heroin	1,989	364	687	1,666
Methamphetamine	3,857	1,217	771	4,303
Other	10,991	3,377	4,630	9,738
Total	**243,095**	**276,122**	**240,080**	**279,137**

Source: Aggregate figures for bulk and nonbulk drugs from DEA's *Annual Financial Statement Fiscal Year 1998*.

Drug evidence may change hands several times from seizure to disposition, particularly if another agency is involved or if the evidence is presented in court. Upon receipt at the laboratory, an evidence technician takes custody of the drugs, verifies that the seals are intact, assigns each exhibit a laboratory identification number, and stores it in a vault for safekeeping. The evidence technician also enters the receipt of the drug evidence into DEA's Laboratory Evidence Management System, which produces a bar code to be used for inventory purposes. Within 3 days of receipt, information about the evidence is also required to be entered into DEA's drug database, the System to Retrieve Information from Drug Evidence (STRIDE). STRIDE is used to track evidence submitted to the laboratories from receipt to destruction and for statistical purposes. Supervisors assign the exhibits to specific chemists for analysis. Chemists then check out the drugs from the vault, verify that the seals are intact, weigh and analyze the drug evidence, and then return it to the vault. The results of the analysis are required to be documented on a forensic chemist worksheet (DEA 86). DEA policy states that evidence should normally be returned to the vault within 5 working days after the analysis report is prepared. After analysis, STRIDE is updated to reflect the test results.

Evidence received from other agencies, such as the U.S. Customs Service (Customs) or the Federal Bureau of Investigation (FBI), is returned to that agency after DEA has completed its analysis. DEA drug evidence remains stored in the laboratory's vault until the laboratory director receives approval from the division office for destruction. Upon receiving approval

for destruction, DEA policy requires that the drugs be disposed of within 90 days. Drugs are disposed of periodically at a commercial incinerator.

Agents also seize weapons, including rifles, handguns, knives, and ammunition and maintain them in vaults within division and field offices. An evidence technician takes custody of the weapons from the seizing agent and enters the receipt into DEA's Non-Drug Evidence System (NEDS), which produces a bar code for inventory purposes. Weapons are maintained in a vault until destroyed, forfeited, transferred to another agency, or returned to the owner.[7]

To help ensure that policies and procedures are followed and that evidence is properly safeguarded and accounted for, the DEA Office of Inspections and the Office of Forensic Sciences performs internal inspections at each laboratory and division office approximately every 24 months. These inspections include a review of field operations including those pertaining to safeguarding and accounting for drug and weapon evidence. After the completion of the inspection, a report detailing the findings and recommendations is issued to division or laboratory management, which must then submit a memorandum to the Chief Inspector within 90 days of issuance, noting any corrective actions completed or planned. The reports remain open until all corrective actions are completed.

DEA Needs to Improve Safeguarding of Drug and Weapon Evidence

Physical safeguards, which include adequate storage facilities and procedures, are needed to reduce the risk of theft, misuse, or loss of drug and weapon evidence and help ensure that evidence is not compromised for prosecution purposes. In addition, physical safeguards can promote a safe working environment for DEA personnel. The four laboratories and division offices included in our review have physical safeguards in place that if operating properly help control access to and use of drug and weapon evidence. However, we identified some weaknesses, including storage problems, which could affect DEA's ability to properly safeguard drug and weapon evidence. In addition, we found that certain required procedures involving drug evidence were not met. DEA's internal inspection reports noted similar weaknesses in the safeguarding of drug evidence.

[7]Return of a firearm to the owner can take place only if the party receiving the firearm may legally own a firearm and ownership of such type of firearm is not prohibited by law.

Physical Safeguards

DEA's evidence vaults and other designated secure areas used to store drug and nondrug evidence must meet certain requirements as established by DEA, DOJ, and the General Services Administration. The requirements include construction specifications and standards for locks, locking devices, and access control systems. At each of the four laboratories and division offices, we observed the location and condition of evidence vaults and other designated secure areas and noted that drug and nondrug evidence was segregated in separate areas as required by DEA policy. We also observed physical safeguards, including cameras, motion detectors, and combination locks that are in place to control and monitor access to and use of drug and weapon evidence. However, due to the sensitive nature of the evidence, we did not perform any comprehensive tests to verify the operation of the specific physical safeguards because we did not want to risk compromising any of the evidence that may be needed for prosecution purposes. For example, while we observed employees entering keypad access codes to obtain entry, we did not attempt to obtain unauthorized entry into controlled areas.

Based on our visits to the four selected locations and our review of DEA's internal inspection reports, we noted some weaknesses with DEA's physical safeguards. Specifically, at the South Central Laboratory in Dallas, we were informed that two cameras inside the drug evidence vault, which monitor vault activity, were not operational. In addition, DEA's policy allows for short-term storage of bulk seizures in detention cells; however, we noted that the Dallas Division Office was using a detention cell for long-term storage for bulk marijuana. In one example, three boxes of marijuana were stored in the detention cell from May 1996 until January 1998. Also, the internal inspection report for the Northeast Laboratory in New York indicated that a vault alarm system had not functioned properly for several years. An official at DEA headquarters indicated that the inspection report did not clearly state the problem and that the alarm was working properly but was not connected to the division office alarm system as required. The official indicated that the alarm was subsequently fixed. To confirm this, we asked for the more recent inspection report for this laboratory, but as of the completion of our fieldwork, it had not been provided to us.

Storage of Drugs and Weapons

During our visits to drug and weapon evidence vaults at the laboratories and division offices, we noted instances of improperly stored evidence. For example, at the laboratories, we noted evidence packaging that was deteriorating and overcrowded evidence vaults. At the division offices, we

also noted improperly sealed weapons. Weaknesses such as these have previously been reported by the DOJ OIG and by DEA's inspection teams.

Unsealed and damaged evidence packaging and overcrowded evidence vaults increase the potential for theft, misuse, and loss of evidence and that such evidence could be compromised for federal prosecution purposes. Due to space constraints in the drug evidence vaults at two of the four laboratories we visited, we observed boxes that had been stacked on the floor such that the lower boxes were being crushed. As the DOJ OIG reported in 1996, the storage of exhibits on vault floor space is not recommended because "cluttered vault aisles can be hazardous and make retrieving and accounting for exhibits more cumbersome and time-consuming." In 1995, the DOJ OIG also reported that the vault storage space was insufficient at the same two laboratories where we noted overcrowding.

We also observed exhibits where the packaging or the tape used to seal boxes was deteriorating or had already deteriorated to the point that the box was open, increasing the potential for access to the contents. For example, at one location, we observed a punctured evidence bag containing approximately 2 kilograms of heroin. At another location, we observed a cocaine exhibit for which the gross weight after analysis was unknown (i.e., not recorded on the box, in the file, or in STRIDE), being stored in a box that was in poor condition. Officials agreed that such items should be repackaged. At the bulk marijuana warehouse maintained by the New York Division Office, we observed that several bags of a 9,000-pound seizure were worn, increasing the potential for access to the contents.

An internal inspection report for one laboratory, not included in our review, also identified improperly stored drugs. Specifically, the internal inspection found that the laboratory had stored drug and nondrug evidence within the same vault, which is not in compliance with DEA policy. Also, the inspection teams identified one resident office, a smaller office within a division office, that did not have an overnight drop safe to store seized drugs, as required by DEA policy.

For safety purposes, DEA policy requires that firearms be carefully unloaded by the agent most familiar with the weapon and sealed in an evidence bag. While conducting our inventory testing of 78 weapons, we observed two handguns that had not been sealed in evidence bags as required. We also observed one seizure of knives that had not been sealed properly. Specifically, the knives were stored within a zipper bag that could

be easily opened. Weapons that are not sealed properly can create unsafe conditions for DEA personnel, as well as for others who may require access to the evidence.

We noted that, while not required by DEA policy, but similar to a Bureau of Alcohol, Tobacco, and Firearms (ATF) policy, many of the handguns we observed had a plastic strip inserted through the chamber, further rendering the firearm safe.[8] In addition, unlike FBI policy, DEA's policy does not require written certification from a firearm instructor ensuring that the firearm has been rendered safe.[9] Although DEA agents are not required to take these additional steps, formalizing such requirements would provide further safeguards that firearms are rendered safe.

Timeliness of the Performance of Certain Required Actions

The DOJ OIG reported in 1995 that chemists took an average of 15 days to return exhibits to the vault after analysis and indicated that even taking 7 days appeared to be excessive. Based on an OIG recommendation, DEA policy was revised to require that drug evidence normally be returned to the vault within 5 working days after analysis. During our visits to four selected laboratories, we found that for 20 of the 216 laboratory items we selected, where the chemists had completed their analysis and prepared the related report, the chemists had retained evidence for an average of 10 working days. Seventeen of the 20 cases occurred at the South Central Laboratory in Dallas, and in one instance, the chemist maintained an exhibit for 34 working days. A laboratory official could not explain why this exhibit was not returned promptly. Promptly returning evidence to the vault ensures that the chemists do not maintain evidence for excessive amounts of time in an area more accessible than the vault.

DEA policy also requires that drug evidence be destroyed within 90 days of receiving approval to do so from the division office. We found that 1 of 16 exhibits we tested, which were being maintained by the laboratory and had been approved for destruction, had not been destroyed within the 90 days required by DEA policy. This exhibit had been authorized for destruction but was not destroyed until over 5 months after approval was obtained. Timely destruction of drugs authorized to be destroyed conserves limited

[8]ATF requires plastic tie wraps to be inserted through the chamber prior to storage of all firearms, including handguns and rifles.

[9]FBI policy requires that a firearm instructor certify in writing that seized firearms are rendered safe prior to transferring custody to an evidence custodian.

vault space, allows agents to close the related case files promptly, and eliminates the additional inherent risk of theft of these drugs that are no longer needed as evidence.

According to DEA policy, DEA has 5 days in which to notify the U.S. Attorney's Office that amounts above certain thresholds for bulk seizures will be destroyed after 60 days from the notification date unless a letter requesting DEA to maintain the drugs is received from the U.S. Attorney's Office. The letters notifying the U.S. Attorney's Office of DEA's intent to destroy the amounts above certain thresholds and the response letters from the U.S. Attorney's Office with justification for not destroying these amounts were not provided for two of the five exhibits we tested in which letters should have been included in the file. In another instance, the U.S. Attorney's Office had been notified; however, the 60-day deadline passed in February 1998 and the evidence had not yet been destroyed as of our visit in October 1998. Ensuring that U.S. Attorney's Offices are promptly notified and that responses are received from them for not destroying evidence needed for prosecution purposes allows DEA to quickly destroy unneeded evidence and conserve limited vault space.

Internal inspection reports identified similar deficiencies at 3 of the 8 laboratories, which include the Southeast and Northeast Laboratories, and at 4 of the 20 division offices, which include the Dallas and New York Division Offices. For example, one laboratory, not included in our review, was not always destroying evidence within the required 90 days after notification that the seized item was approved for destruction. Other examples included chemists not returning exhibits to the vault within the 5 working day time frame, and seized drugs being stored in a temporary overnight storage location for over 1 year.

Accountability Over Drug and Weapon Evidence Needs Strengthening

We identified weaknesses over the accountability of drug and weapon evidence that could increase the potential for theft, misuse, or loss of such evidence, and that such evidence could be compromised for federal prosecution purposes. Although the division offices and laboratories had policies and procedures designed to ensure accountability over drug evidence, they did not always follow them. During our visits, we noted (1) incomplete and missing documentation over drug evidence, including chain of custody documentation, (2) weaknesses in recordkeeping of drug and weapon evidence, and (3) weaknesses in accounting for drug weights, including unverified and unexplained weight differences in drug exhibits. Notwithstanding these problems, evidence control personnel at the four

laboratories and division offices we visited were able to locate each item selected for our testing that was in storage in evidence vaults or other secure areas, and for those items not in storage, they provided documentation supporting the current location or status of the item. For example, if the exhibit had previously been destroyed, we were provided a copy of the DEA form authorizing the destruction and showing signatures of the DEA personnel who witnessed the destruction.

Maintaining Documentation

During our testing, we identified laboratory and evidence custodian files that were missing documentation, including chain of custody documentation, or contained incomplete documentation. We also identified evidence labels that were missing witness signatures. DEA policy requires that complete and accurate documentation, such as the Report of Drug Property Collected, Purchased, or Seized (DEA 7), forensic chemist worksheets (DEA 86), and forms (DEA 12) used to transfer evidence to other parties (e.g., court, another federal agency), be maintained in the seizure files. These forms, along with evidence accountability records (DEA 307) maintained in a separate area within the vault, are used to document transfers of evidence and provide a chain of custody for the evidence. For bulk seizures, the laboratory files must also contain photographs of bulk seizures submitted to the laboratory. Photographs provide visible proof of the evidence in the event that drugs over certain threshold amounts are destroyed. In addition, DEA policy requires that two agents be involved in the seizure and sealing of evidence and that they both sign an evidence label. Having a witness to the seizure and the sealing of critical evidence is important to prevent any one individual from having uncontrolled access to evidence.

Upon receipt of evidence at the laboratory, the evidence custodian is required to sign the DEA 7, which is prepared by the submitting agent, accepting receipt of the evidence. The evidence custodian is not required to reweigh the evidence, but must examine the seals and check a box on the form indicating whether the evidence seals are intact. We found substantial compliance with the policy, but noted a few exceptions. For example, 3 of the 236 DEA 7s we reviewed were missing the checkmark indicating whether the seals were intact and one was missing the evidence custodian's signature. The internal inspection report for one division office, which was

not included in our review, stated that numerous deficiencies were noted in documenting the chain of custody on the DEA 7 form.[10]

DEA 86s are used by chemists to record all raw data, observations, and calculations regarding their analysis of drug evidence. They are also used to document which chemist received the evidence, whom the evidence is physically received from, and gross weights before and after analysis, among other items. After the form is prepared, a supervisory chemist is required to review the form. Our review of the DEA 86s noted a few exceptions. Specifically, the worksheets were missing from 2 of 216 analyzed exhibits in our sample and 3 of the worksheets were missing the reviewer's initials. Four of the eight DEA laboratory internal inspection reports, including the Southwest Laboratory, also identified instances in which there were errors in the completion of this form. Not being able to locate these forms or incorrectly completed forms could require a chemist to break the original chemist's seal and reanalyze evidence—perhaps years after the initial analysis. In addition, certain information reported only on the form, such as the gross weights before and after analysis, would be unknown.

DEA 12s are required to be maintained in the laboratory case files if drug evidence is transferred to individuals outside of the laboratory. The individual receiving custody of the evidence is required to sign the form and return it to DEA for inclusion in the laboratory file. According to DEA policy, the signature of a witness must be obtained when the evidence is transferred to a non-DEA official, such as a Customs or FBI agent. We found that the files for 10 of the 77 exhibits in our laboratory sample that had been transferred to an individual outside the laboratory were missing a transfer form. In addition, the laboratories were inconsistent in obtaining witness signatures on these forms. At the Southwest Laboratory, officials told us that they did not require Customs agents to provide a witness signature due to the large volume of exhibits they analyze for Customs (i.e., over 300 exhibits could be picked up on a given day). Additionally, an internal inspection report for one of the laboratories, not included in our review, also found examples of missing DEA 12s. Having the recipient's acknowledgement of receipt is critical for documenting the transfer of custody and the recipient's acceptance of responsibility for the evidence.

[10]No additional explanation of these chain of custody issues was given in the document we were provided.

DEA policy also requires that photographs of bulk seizures be maintained in laboratory files. Photographs provide visible evidence of drugs that may be destroyed prior to the trial of a case and may be used in lieu of transporting drugs to court. Two of the four bulk seizure laboratory files we reviewed were missing the required photographs. The drugs for one of these seizure cases had already been destroyed. In another example, photographs were missing for a 50-kilogram seizure because it had been split into five exhibits, so that no one exhibit was considered bulk. In addition, DEA internal inspection reports for three laboratories, including the Southeast and Southwest Laboratories and the San Diego Division Office, indicated that 11 of 43 bulk seizure cases reviewed were missing the required photographs. Ensuring that photographs are taken and maintained in the file can reduce unnecessary transporting of drug evidence to court and could allow for earlier destruction of bulk evidence.

DEA policy requires that two agents be involved in the seizure and sealing of evidence and that they both sign an evidence label. During our testing, we noted instances where the required witness signature was missing from the evidence label. Specifically, 4 of the 142 drug exhibits we weighed, as well as 8 out of 72 weapons we selected for testing and observed, were missing the required witness signatures on the evidence labels. Officials were unable to explain why the required signatures were missing. Having a witness to the seizure and the sealing of critical evidence is important to prevent any one individual from having uncontrolled access to evidence.

Recordkeeping

DEA uses various information systems and logbooks to account for drug and weapon evidence. During our testing, we noted errors and inaccuracies in certain data in the systems used to account for both drug and weapon evidence and the logbook used to account for bulk marijuana. DEA's internal inspection teams reported similar weaknesses with the recordkeeping of drug evidence. Maintaining complete and accurate records is essential for ensuring that evidence is properly accounted for and reported on.

Federal financial accounting standards and related supplemental guidance have highlighted the importance of accurately accounting for nonvalued seized and forfeited property, including seized drugs. Specifically, the Statement of Federal Financial Accounting Standard (SFFAS) No. 3, *Accounting for Inventory and Related Property*, issued in October 1993, requires the disclosure of all material forfeited property, including those items with no financial value. One such disclosure is an analysis of changes

in seized property that would include the amount of seized property, including drugs (1) on hand at the beginning of the year, (2) acquired during the year, (3) disposed of during the year, and (4) on hand at the end of the year.[11]

Recently issued supplemental guidance for SFFAS No. 3 states that amounts for certain drugs, including cocaine and heroin, should be based on weight.[12] For example, the standard unit of measurement for such illegal drugs should be kilograms. In addition, according to the guidance, material amounts of other seized drugs should be separately reported by liquid weight, dry weight, number of tablets, or other appropriate measures.

The evidence system used to track nondrug evidence, including weapons, contained inaccurate data even though annual inventories were being performed with no outstanding exceptions being documented. DEA policy requires annual inventories of all nondrug evidence; however, we identified 6 of 78 sampled items at three of the four division offices we visited where weapons were included on the inventory listing but DEA officials were unable to locate them in the evidence vault. Only after DEA personnel conducted research were they eventually able to explain all of the discrepancies and provide us with supporting documentation. In some cases the weapon had already been destroyed; in others, the weapon had been transferred. For example, at the Miami Division Office, two of the weapons were destroyed in July 1995, while another was transferred to the U.S. Marshals Service in 1993. These weapons still appeared on the office's inventory listing as of October 1998 even after the division office officials indicated that annual inventories had been conducted.

In another instance at the Miami Division Office, we were unable to physically observe a firearm because the evidence custodian was unable to

[11]The Joint Financial Management Improvement Program (JFMIP) has recently issued an exposure draft, *Seized Property and Forfeited Assets Systems Requirements* (JFMIP-SR-99-7, June 1999), that covers systems requirements for seized property and forfeited assets. According to the exposure draft, a system component that covers the custody of seized and forfeited property must have the capability to provide information to allow the independent verification that each item of seized property is in the physical or constructive custody of the government and that the recorded quantity is accurate.

[12]*Reporting on Non-Valued Seized and Forfeited Property, Federal Financial Accounting and Auditing Technical Release Number 4*, July 31, 1999, issued by the Accounting and Auditing Policy Committee (AAPC), which is a permanent committee sponsored by the Federal Accounting Standards Advisory Board (FASAB).

locate the firearm at the time of our visit. The custodian subsequently informed us that the firearm had been packaged for transfer to another DEA office and provided us with photographs that DEA represented was of the firearm. Additional documentation was provided supporting the transfer and receipt of the firearm; however, we noted that the contents of the package, listed as "3 guns, money, and jewelry" was recorded on a copy of the Federal Express packaging slip, which was attached to the outside of the package. According to DEA policy, the nature of the contents should not have been specified on the packaging slip.

We also noted errors in the logbooks used to account for evidence maintained in the bulk marijuana storage facilities at two division offices. For 3 of the 15 bulk storage items selected for testing at the San Diego Division Office, inaccurate case numbers were recorded in the logbook when the drugs were initially brought into the storage area and then the proper case number was recorded when the drugs were removed. This inconsistent recording makes it more difficult to track the amount of drugs that should be in the facility at any given time and to link the drugs to the case number they are associated with. The responsible division office official could not explain why the agents were using incorrect case numbers and stated that she would take action to address this issue. At the Dallas Division Office, a logbook entry was taped over and not marked through and initialed as required by DEA policy. Properly marking through and initialing the entry allows others to determine who made the change and whether the original entry was no longer appropriate.

Other discrepancies were found with the data in the laboratories' STRIDE system. This system is used to provide statistical and other program information related to drug seizures. Data from the DEA 7, as prepared by agents, is required to be entered into STRIDE within 3 working days of receipt of the evidence. In most cases, the information was not entered within 3 working days. DEA officials attributed this to staffing shortages and other priorities. Once the analysis is completed by a chemist, STRIDE is required to be updated to record the results of the analysis and again when the evidence is transferred or destroyed. Out of the 236 laboratory files we reviewed, we found 15 instances where the data in STRIDE did not agree with the supporting documentation. In 6 of the 15 instances, STRIDE was not updated to reflect correct weight information. Ensuring that data are promptly and correctly entered into STRIDE provides program managers with more accurate and useful information.

DEA's internal inspection reports also highlighted recordkeeping problems at 2 of the 8 laboratories, the Northeast and Southeast Laboratories, and 3 of the 20 division offices, all of which were not included in our review. For example, the Northeast Laboratory, after conducting an inventory of its vault, experienced "a large number of discrepancies" when reconciling its STRIDE inventory report to the DEA 307s. The inspection report relating to this laboratory also stated that, "[a]s a result of the noted deficiencies, which involved numerous items of evidence not accounted for, a PR [Office of Professional Responsibility] investigation was initiated." Because we received the sections from the internal inspection reports near the end of our fieldwork, we did not follow-up with the laboratory to determine the results of this investigation.

DEA's internal inspection reports also noted problems at two division offices not included in our review involving the logbook used to account for items in the bulk storage facility. At one location, it was reported that the individual responsible for the drug evidence was "not maintaining his record keeping and tracking system in compliance with DEA policies as delineated in the DEA Agents Manual, Section 6662. Although several log books were present, IN [Office of Inspections] determined that all drug evidence was tracked in one bound ledger, which contained gaps in time exceeding seven years." At another division office, the report stated that "there were inaccurate entries in the drug logbooks. Both drug logbooks contained inconsistent descriptions of the drug exhibits seized and submitted, which coupled with a lack of case numbers and submitted weights, created the appearance that drug exhibits may have been lost." According to a DEA official, corrective actions have been taken to address these issues.

Accounting for Weights of Drug Exhibits

According to DEA policy, for control purposes and because of mandatory minimum sentencing laws, all weights for drug exhibits should be determined as precisely as possible. Properly documenting the weights at different stages (i.e., upon receipt or after analysis) and resolving discrepancies is critical if the exhibit is used as evidence in court and for decreasing the potential for theft. We found weaknesses with the recorded weights of drug exhibits, from the initial seizure by the agent through destruction by the laboratory. Specifically, we found instances where (1) agents improperly recorded weights on the DEA 7, (2) chemists did not obtain a witness' verification for weight differences, (3) DEA did not always require that weights be recorded on the forms used to transfer

drugs for safekeeping, (4) chemists improperly recorded weights on the DEA 86 after analysis, and (5) unexplained weight differences occurred.

DEA policy requires agents to be properly trained in the use of scales and to weigh drug evidence after sealing and prior to submission to the laboratory. The gross weight of the exhibit is recorded on the DEA 7 to the nearest tenth of a gram if under 1 kilogram and to the nearest gram if over 1 kilogram. We found instances where agents inappropriately rounded or recorded the number of packages seized instead of the weight. In one example, an agent recorded that 6 "kilos" or bricks of cocaine had been seized and submitted to the laboratory, not the actual weight (7.75 kilograms as recorded by the chemist). In another example, the agent recorded that 25 kilograms of hashish oil was seized and submitted to the laboratory, instead of recording the weight to the nearest gram as required by DEA policy. Since the agent did not record the weight to the nearest gram, a significant difference could exist and not be detected. For example, the weight recorded to the nearest gram for this exhibit could range from 24,500 grams to 25,499 grams. Inaccurate recording of drug weights decreases DEA's accountability over such evidence.

During our testing we noted that drug evidence is not required to be weighed by the laboratory upon receipt, but just prior to analysis by a chemist. The evidence may remain in the vault for several months before it is analyzed. Prior to breaking the seals, chemists are required by DEA policy to verify that the weight of drug evidence agrees with the agent's submitted weight for the drug evidence. If there is a difference of more than 2 grams or 0.2 percent from the agent's submitted weight, whichever is greater, the chemist is required to obtain verification of the weight difference from a supervisor or another chemist who must then initial next to the chemist's recorded weight designating that the verification was performed.

In 1995, DEA's Administrator disagreed with an OIG recommendation that exhibits be weighed immediately upon receipt at the laboratory. The Administrator stated that the laboratory should ensure that the evidence is properly sealed and that "policy and procedure permit any discrepancy in gross weight to be addressed administratively at any time prior to breaking the seal." However, of the 216 analyzed exhibits in our sample, the chemist did not obtain the required written verification for 28 of the 86 drug exhibits that met the criteria for verification. The differences ranged from just over 2 grams to 1.75 kilograms (about one-fifth of the exhibit's total weight). Obtaining independent verification when differences exist ensures

that possible arguments over such differences by the defense or the submitting agent are mitigated. It also decreases the potential that the difference could be subjected to theft and not be detected. For the 28 exhibits we reviewed with differences and no witness verification, the time frames for receipt of evidence by the laboratory to when the chemist weighed the exhibit ranged from 1 week to over 5 months.

During our testing, we also noted instances where the weights of drug exhibits were not recorded on the forms used to document the transfer of drugs to a division office or to a laboratory. DEA policy requires the gross weight of bulk marijuana to be thoroughly documented, but does not specifically require that this information be provided to the evidence custodian upon transfer to bulk storage facilities at the division offices. In a bulk marijuana exhibit we selected for testing, we were only able to verify that the quantity (12 boxes and 1 container) agreed to the quantity recorded on the form used to transfer the evidence. There was no weight recorded in the file maintained by the evidence custodian or in the logbook. Also, at the laboratories we visited, we noted that weights were not always recorded on the forms used by several non-DEA agencies when submitting exhibits to a DEA laboratory for analysis. The agencies included local police departments, ATF, and Customs. DEA policy does not require non-DEA agencies to record weights on the forms used to transfer exhibits, therefore chemists are unable to determine if there is a difference between the submitted weight and the new weight that would require a witness verification. Further, the policy does not require that chemists obtain a witness' verification if the weight is not recorded on the transfer form. Not documenting weights on the forms used to transfer drugs for safekeeping and/or requiring that chemists obtain a witness' verification for exhibits that do not contain a recorded weight on the transfer form decreases DEA's accountability over such evidence.

Once the chemist performs the analysis on the exhibit, DEA policy requires the chemist to record the gross weight of the exhibit after it is resealed to the nearest tenth of a gram if the weight is between 10 and 1,000 grams, and to four significant figures if greater than 1,000 grams (e.g., 2,013 grams, 327.0 kilograms). However, the weights for 8 of the 142 exhibits we physically observed were inappropriately rounded by the chemist (7 of the

8 occurred at the Southeast Laboratory).[13] In one example, the chemist recorded the gross weight after analysis as 7.1 kilograms, instead of recording the weight to 4 significant figures. Not recording the weight more precisely could result in undetected theft of the difference due to rounding. There was one instance in which we could not compare our observed weight for a particular exhibit to the recorded gross weight after analysis because the chemist recorded the combined weight of four exhibits together and not for each exhibit. DEA officials agreed that the weights should have been recorded for each exhibit, particularly since one exhibit could be destroyed before the others. As noted above, inaccurate recording of drug weights decreases DEA's accountability over such evidence.

We also noted instances where DEA officials were unable to account for or explain differences between recorded weights and our observed weights. These differences ranged from a few grams to over 11.35 kilograms (about 25 pounds). Of the 142 items we reweighed at the laboratories, our observed weight for 40 of the items was more than 5 grams over or under the chemist's recorded gross weight after analysis.

DEA officials told us that scientific research has been performed and documented as to why certain drugs are susceptible to weight changes. For instance, weight gains are typically due to moisture absorption by certain drugs, such as cocaine and heroin. They stated that losses for certain other drugs, such as marijuana and cocaine base, are usually the result of the drugs losing moisture as they dry. However, 7 of the 40 items with weight differences did not follow the above trends and 2 of these items occurred on exhibits that had been authorized for destruction. Specifically, at the Northeast Laboratory, we weighed one cocaine exhibit that was no longer needed as evidence and was about to be destroyed, and determined that it was about 50 grams[14] less than the gross weight recorded by the chemist a few weeks before our visit. At the Southeast Laboratory, one cocaine exhibit had been analyzed 3 years prior to our testing and the weight for this exhibit had decreased by 6 percent, approximately 300 grams. In another example at the same laboratory, the gross weight after

[13]According to DEA officials, having chemists record the gross weight after analysis on the DEA 86 has always been a recommended procedure that became a requirement in January 1998. We were unable to compare our observed weight for 16 exhibits that were analyzed prior to when the requirement to record the gross weights after analysis became effective.

[14]Fifty grams of cocaine have an approximate "street" value of up to $5,000 based on DEA estimates as of February 1998.

analysis of a cocaine exhibit decreased by over 200 grams, even though additional materials, three plastic bottles and bubble wrap, were added to the exhibit prior to resealing. Laboratory officials at both sites were unable to specifically explain the lower weights for these three exhibits, but indicated that other factors, such as humidity or temperature changes within the vault, could result in weight differences that did not follow the above trends.

The largest difference was noted at the bulk storage facility maintained by the Miami Division Office, where a marijuana exhibit weighed about 25 pounds less than (or about half) the weight recorded when the drug was received at the site. Although both the agent and the evidence custodian had verified and initialed the receiving weight in this case, DEA officials agreed that the decrease in weight seemed excessive, but were unable to provide a specific explanation for the difference.

Conclusion

DEA has established numerous policies and procedures to control and safeguard drug and weapon evidence in its custody. However, based on our work at four division offices and laboratories and the results of DEA's internal inspections performed from March 1996 through August 1998, specific actions are needed to strengthen accountability over and safeguarding of drug and weapon evidence. Such actions will help reduce the potential for theft, misuse, or loss of drug and weapon evidence and the risk of evidence being compromised for federal prosecution purposes while in DEA custody.

Recommendations

We recommend that the Attorney General require that the DEA Administrator take the appropriate steps to reinforce DEA's adherence to existing DEA policies regarding

- properly storing bulk marijuana evidence in designated approved areas and sealing weapons in evidence bags;
- destroying drugs promptly to alleviate overcrowded drug evidence vaults and reduce the additional risk of theft since these drugs are no longer needed as evidence;
- chemists returning drug evidence to the evidence vault promptly after analysis so that the evidence is not maintained for excessive amounts of time in a more accessible area than that of the vault;

- requiring that two signatures be recorded on evidence labels prior to acceptance by laboratory and division office evidence custodians;
- maintaining complete and properly reviewed documentation in the laboratory seizure files and promptly entering accurate information into STRIDE;
- identifying any discrepancies–between evidence maintained in the vault and the location of evidence per the Non-Drug Evidence System–during annual inventories and promptly researching the discrepancies and updating the appropriate records;
- not specifying the contents on packaging slips when using commercial carriers;
- maintaining complete and accurate information in bulk marijuana logbooks; and
- chemists and agents recording weights in accordance with DEA policy and chemists obtaining an independent written verification if weight differences, over the DEA established threshold, exist between the weight of drug evidence reported by the agent and that weighed by the chemist.

Further, we recommend that the Attorney General require that the DEA Administrator modify existing DEA policy to include guidance for

- agents to obtain a written certification from an independent party experienced in handling firearms that firearms and other weapons being submitted for storage in the vault are rendered safe prior to being stored;
- requiring that if a DEA 12 is used to transfer bulk marijuana (1) the weight be recorded on the DEA 12 or (2) a copy of the DEA 7 be provided to the evidence custodian; and
- requiring that weights be recorded on the forms used to transfer non-DEA exhibits to a laboratory prior to acceptance by the evidence custodian and/or requiring that chemists obtain a witness verification if no weight is recorded on the transfer form.

Agency Comments and Our Evaluation

In commenting on a draft of this report, DEA concurred that the accountability and safeguarding of evidence is of critical importance and that we are right to point out the inherent risk involved in monitoring the integrity and accountability of evidence. DEA indicated that it will take the appropriate steps to reinforce its adherence to existing policies or to implement new policies relating to 11 of our 12 recommendations. DEA disagreed with our recommendation to modify existing DEA policy to

require that weights be recorded on the forms used to transfer bulk marijuana exhibits prior to acceptance by the evidence custodian because they believe that this policy already exists. While we recognize that a DEA policy exists that requires that weights be documented on the DEA 7, several of our sample items involved transfers of bulk marijuana to an evidence custodian using a DEA 12 and the weights were not recorded on the DEA 12. Although a description of the evidence is required to be recorded on the DEA 12, recording the weight on the form is not specifically required. We therefore clarified our recommendation to state that DEA modify their existing policy to require that if a DEA 12 is used to transfer evidence (1) the weight be recorded on the DEA 12 or (2) a copy of the DEA 7 be provided to the evidence custodian.

In addition to responding to our recommendations, DEA provided us with additional comments on our draft report and requested that we consider them before finalizing the report for publication. DEA stated that issues identified in the report do not appear to be systemic weaknesses and, for the most part, were found in areas where redundant controls are in place to ensure that the integrity of the evidence is maintained at all times. We disagree. Several of the issues discussed in this report, which we consider to be of a more severe nature, involved discrepancies at all, or almost all, of the locations that we visited and redundant controls did not exist to compensate for the deficiencies. In addition, while DEA officials indicated that the reported deficiencies in their inspection reports had been addressed, as noted throughout this report, we identified weaknesses that were the same or similar to ones identified during internal inspections performed prior to our review including some at the locations we visited.

For example, DEA policy requires that if drug evidence is transferred to an individual outside of the laboratory, the individual receiving custody must sign the DEA 12 (transfer form) and return it to DEA. We found 10 of 77 drug exhibits that had been transferred to an individual outside the laboratory that were missing the DEA 12. Having the recipient's acknowledgment of receipt is critical for documenting the transfer of custody and the recipient's acceptance of responsibility for the evidence. The controls mentioned by DEA (i.e., recording the transfer on a DEA 307, DEA 12, and in a database) may be redundant in documenting the transfer of custody, but these do not in any way annotate or document the recipient's actual acceptance of responsibility for the transferred evidence. We identified this problem at each of the four laboratories we visited.

In another example, for 28 of the 86 drug exhibits we reviewed that had weight discrepancies above the threshold set forth in DEA's policy, chemists did not obtain the appropriate verification required by DEA policy before opening and analyzing the evidence. Obtaining independent verification when differences exist ensures that possible arguments over such differences by the defense or the submitting agent are mitigated and decreases the potential that the difference could be subjected to theft and not detected. Three of the 4 laboratories that we visited contributed to the 28 discrepancies in this area, and we did not identify a compensating control that would specifically reduce the risk of this type of deficiency. According to a DEA official, the inspection teams did not test for this verification, but will do so in future inspections.

In several comments related to the significance of certain discrepancies, DEA stated that all exhibits of drug evidence examined by GAO were found to be in a sealed condition. We agree that adequately established and implemented sealing of evidence procedures can reduce the risk of theft, misuse, or loss of drug evidence. However, certain conditions identified by us during our testing and included in this report diminish the effectiveness of DEA's sealing of evidence procedures. For example, a witness signature was not present on the evidence label used to seal evidence by the seizing agent for 4 of 142 drug exhibits we reweighed. Having a witness signature at the time of sealing the evidence is important to prevent any one individual from having uncontrolled access to evidence. In addition, we observed exhibits for which the packaging or the tape used to seal boxes was deteriorating, or had already deteriorated to the point that the box was open, increasing the potential for access to the contents. At one location, we observed a punctured evidence bag containing approximately 2 kilograms of heroin. Further, at a bulk marijuana warehouse, we observed that several bags of a 9,000 pound seizure were worn, increasing the potential for access to the contents.

This report contains recommendations to you. The head of a federal agency is required by 31 U.S.C. 720 to submit a written statement on actions taken on these recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Reform within 60 days of the date of this report. You must also send a written statement to the House and Senate Committees on Appropriations with the agency's first request for appropriations made over 60 days after the date of this report.

We are sending copies of this report to Senator Fred Thompson, Senator Joseph Lieberman, Representative Dan Burton, Representative Henry A. Waxman, Representative Stephen Horn, and Representative Jim Turner in their capacities as Chair or Ranking Minority Member of Senate or House Committees and Subcommittees. We are also sending copies of this report to Donnie R. Marshall, the Administrator of DEA; Robert L. Ashbaugh, Acting Inspector General, Department of Justice; and the Honorable Jacob J. Lew, Director, Office of Management and Budget. Copies will be made available to others upon request.

If you have any questions regarding this report, please contact me at (202) 512-3406. Key contributors to this assignment were Larry Malenich, Casey Keplinger, and Jeffrey Knott.

Sincerely yours,

Gary T. Engel

Gary T. Engel
Associate Director
Governmentwide Accounting and
Financial Management Issues

Scope and Methodology

To accomplish our objectives, we interviewed officials from DEA headquarters and selected division offices and laboratories concerning various aspects of the seizure, storage, and disposal of seized drugs and weapons. We reviewed DEA's *Laboratory Operations Manual* and *Agents Manual* for policies and procedures pertaining to the processes used to seize, account for, safeguard, and dispose of drugs and weapons. Based on documentation provided by DEA headquarters, we selected four division offices and corresponding laboratories with a large volume of drug seizure activity–Dallas, Texas (South Central Laboratory); Miami, Florida (Southeast Laboratory); New York, New York (Northeast Laboratory); and San Diego, California (Southwest Laboratory)–to perform our testing.

From DEA headquarters, we obtained a STRIDE listing for drug exhibits submitted to the laboratories from October 1997 through August 1998. A random sample of 59 drug exhibits from the listing was statistically selected for each of the four laboratories. These exhibits included DEA cases, as well as cases from other agencies, such as FBI and Customs. For each item selected, we requested the laboratory seizure file and other related documentation to test certain controls, mostly related to ensuring that proper chain of custody documentation existed. We judgmentally selected and weighed 10 of the 59 items at each selected site to verify the recorded weight in the file against our observed weight.[1] At each of the selected laboratories, we also obtained current inventory listings of cocaine seizures over 3 kilograms and heroin seizures over 500 grams, and selected 10 seizures from the listings, observed their existence, and weighed the item.[2] From the evidence maintained in the vault at each of the four selected laboratories, we judgmentally selected 15 items, weighed each item, and traced each one to a current inventory listing provided by the laboratory. Items were selected based on length of time the exhibit had been in storage, condition of packaging, type of drug, and/or whether the exhibit had been authorized for destruction. In total, we weighed 142 items.

[1]At two of the laboratories, we were unable to select 10 items to reweigh because many of the exhibits in our sample of 59 had been transferred to another agency, destroyed, or were of insignificant amounts. In these instances, replacement items were selected.

[2]At two of the laboratories, we selected seven items from the listings and 3 items from alternative sources. At one laboratory, 3 of the 10 items had been authorized for destruction. At another laboratory, 3 of the 10 items selected were exhibits received by the laboratory, but not yet analyzed.

At each selected division office, we reviewed the logbooks maintained by the facility to track bulk marijuana and physically inspected the bulk storage facilities. We judgmentally selected a total of 20 exhibits from the logbooks and 18 exhibits from those maintained in the storage facilities. We reviewed the related files maintained by the evidence custodian and weighed 14 of the exhibits. The specific number of cases selected for review and weighed varied at each location due to a limited number of bulk drug exhibits being maintained or because we were unable to reasonably reweigh the exhibit. For those cases not reweighed, we verified the quantity. At each selected division office, we also obtained current inventory listings from NEDS to randomly select 10 weapons to verify their existence in the vault. In addition, from weapons maintained in the vault, we judgmentally selected 10 items based on length of time each weapon had been in storage, type of weapon, or condition of packaging. Each selected item was traced to the current inventory listing.[3] We observed 72 of the total 78 items selected. Six of the items selected from the listing were no longer being stored in the division office's evidence vaults. For these six cases, we reviewed the related disposition documents.

At each of the four laboratories and division offices, we observed the location and condition of storage facilities and other physical safeguards including cameras, motion detectors, and combination locks that are in place to control access to and use of drug and weapon evidence. We also made inquiries of DEA's personnel about the operation of the physical safeguards. However, due to the sensitive nature of the evidence, we did not perform any comprehensive tests to verify the operation of the specific physical safeguards because we did not want to risk compromising any of the evidence that may be needed for prosecution purposes.

To determine if issues we identified at the four selected division offices and laboratories are indicative of more systemic concerns, we (1) reviewed reports[4] issued by DOJ's Office of Inspector General (OIG) related to

[3]At one division office, we used a manually prepared listing provided by the evidence custodian. At another division office, we were only able to identify and select six weapons from the vault since this division office seizes a limited number of weapons and does not maintain a separate area just for weapons. We selected and observed an additional two items from the listing. Therefore, the total number of weapons selected at the 4 offices was 78.

[4]*Drug Enforcement Administration's Laboratory Operations* (DOJ OIG, 95-18, May 1995) and *Retention of Drug Evidence in Drug Enforcement Administration Laboratories* (DOJ OIG, I-96-02, February 1996).

laboratory operations and (2) requested and reviewed a copy of the sections of the most recent DEA internal inspection reports for 20 of DEA's 21 division offices[5] and for the 8 laboratories that cover procedures and internal controls related to seized drugs and weapons. These inspections were performed between March 1996 and August 1998. Because we received the sections of the internal inspection reports near the end of our fieldwork, we did not follow-up with the division offices or laboratories to determine the extent to which noted deficiencies had been corrected. We performed our work in accordance with generally accepted government auditing standards from August 1998 through August 1999.

We requested written comments on a draft of this report from the Attorney General or her designee. The Acting DEA Administrator provided written comments, which are discussed in the "Agency Comments and Our Evaluation" section and are reprinted in appendix II. DEA also provided five enclosures with technical suggestions or supplemental information that we took into consideration while finalizing our report.

[5]The El Paso Division Office was established after the completion of our fieldwork.

Comments From the Drug Enforcement Administration

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U. S. Department of Justice

Drug Enforcement Administration

OCT 21 1999

Jeffrey C. Steinhoff
Acting Assistant Comptroller General
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Steinhoff:

This is in response to your request on September 21, 1999, to Attorney General Janet Reno to review and comment on the General Accounting Office (GAO) report titled, ***SEIZED DRUGS AND WEAPONS: DEA Needs to Improve Certain Physical Safeguards and Strengthen Accountability.*** The Department of Justice (DOJ) has directed that the Drug Enforcement Administration (DEA) prepare the final response to this report and all comments and corrections to the report are included.

Overall, the GAO report notes that DEA has instituted appropriate policies and procedures to address the critical area of safeguarding and accountability of its drug and weapon evidence. The GAO review found, and its recommendations note, that there are areas where DEA should reaffirm and reemphasize adherence to these policies and procedures and to improve the monitoring of compliance. As GAO indicated, all of the evidence that was the subject of their review was present or accounted for.

See comment 1.

Of related significance, DEA would like to make note that in June 1999, subsequent to GAO's review, the DEA laboratory system was inspected by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), one of the leading crime laboratory accrediting bodies in the world. A large part of their inspection dealt with a detailed examination of evidence accountability procedures. Not one issue that related to the accountability or integrity of evidence was raised by the ASCLD/LAB inspection teams at any of the eight DEA laboratories inspected. On September 10, 1999, the ASCLD/LAB formally voted to grant accreditation to the DEA laboratory system. (Letter of Accreditation-Enclosure 1) This marked the second time that all eight DEA laboratories were approved for accreditation by ASCLD/LAB. Accreditation signifies that laboratory operating procedures are in place, being followed, and functioning according to the standards set by ASCLD/LAB and the DEA Office of Forensic Sciences (SF). These standards have been determined to be essential to the effective operation of a crime laboratory.

In reviewing this draft report, DEA would like to acknowledge the changes that GAO made based on the discussions of certain issues in the exit conference, and the subsequent meeting. DEA asks that GAO consider these comments in finalizing the report for publication. Additional technical and language corrections that DEA suggests for accuracy and clarity have been enclosed (Enclosure 2).

Report Issues

DEA concurs that the accountability and safeguarding of evidence is of critical importance and that GAO is right to point out the inherent risk involved in monitoring the integrity and accountability of evidence. However, DEA believes that the report should more strongly emphasize the significant actions that DEA has taken to ensure that its policies and procedures are followed. DEA believes that the report should highlight the significant GAO finding that they "[were] able to locate [account for] each item selected for our testing."

See comment 2.

Furthermore, all exhibits of drug evidence examined by GAO were found to be in a sealed condition, i.e., seals intact. Locating every piece of drug evidence with the seals intact is a strong indication of DEA's ability to account for evidence and its integrity. This is especially significant considering that the DEA laboratory system has approximately 120,000 pieces of drug evidence in its inventory. The report should emphasize that all drug evidence was found in a sealed condition.

See comment 3.

GAO notes that DEA continues to monitor compliance in these areas through its inspection process. DEA requests that GAO clarify the dates of the inspections in the report. Because of its two-year inspection cycle, the reports GAO used for its review were dated from 1996 to 1998, and represent historical, not contemporary problems. All of the problems identified in these inspection reports were corrected during these inspections, or were subsequently resolved. None are outstanding. DEA believes that GAO should note that these problems were resolved in its report.

See comment 2.

See comment 4.

The issues identified by GAO as weaknesses in physical safeguards and accountability relate to instances where GAO's random sampling showed that compliance with certain DEA policies and procedures was not always 100 percent. GAO bases its claims regarding accountability in large part on the fact that not all forms required by the various DEA internal manuals were completed. While isolated incidents were discovered, the percentage of instances where these problems occurred were minor and the individual problems identified insignificant. [See page 19: 3 of 236 DEA-7s, 1.27%, "were missing the check mark indicating whether the seals were intact;" 1 of 236, 0.4%, "was missing the evidence custodian's signature;" DEA-86s not present in 2 of 216 cases, 0.9%; 3 DEA-86s of 216, 1.38%, "lacked reviewer's initials;" page 21: 4 of 142 drug exhibits, 2.81%, lacked witness signatures on evidence labels.]

Now on pp. 14 & 15.

Now on p. 16.

See comment 2.

The issues identified in the report do not appear to be systemic weaknesses and, for the most part, were found in areas where redundant controls are in place to ensure that the integrity of the evidence is maintained at all times. For example, when evidence is transferred, the information is recorded in many different ways, on a DEA-307 form, a DEA-12 form, and it is also entered in the Laboratory Evidence Management System (LEMS) database. Having these redundancies ensures that shortcomings in one control will not result in an accountability problem. The GAO report should reflect the fact that DEA has instituted these significant redundant controls.

See comment 5.

Several references are made to the procedures used by DEA laboratories to receive and process evidence. On pages seven and eight, there are explanations of the procedures used by evidence

technicians to receive evidence from agents and the procedures used by forensic chemists to receive evidence from the vault for analysis. However, the report did not acknowledge that evidence technicians, as well as the chemists, verify that the seals on the evidence are intact and that the evidence matches what is described in the DEA-7. This is one of the many redundant controls which DEA has instituted to ensure the integrity of the evidence.

See comment 6.
Now on p. 10.

GAO identified instances of problems with security equipment related to DEA physical safeguards, specifically at the South Central and Northeast Laboratories. On page 11, GAO indicates that they "observed physical safeguards including cameras, motion detectors, and combination locks ..." GAO reports that they were informed of two non-operational cameras inside the evidence vault at the South Central Laboratory. However, this laboratory does not have cameras inside of its evidence vault, and they are not required as part of its security system. As discussed with GAO, DEA believes that this was an apparent misunderstanding. GAO also reports that the vault alarm system at the Northeast Laboratory had not functioned properly for several years. At the time of GAO's visit to this laboratory, the alarm was, and had been, functioning properly for nearly a year. Information was provided to GAO to demonstrate that the alarm issue had been resolved. Enclosed is a copy of a Self-Inspection Status Report showing this issue was closed (Enclosure 3).

See comment 7.

See comment 8.

DEA regards the physical security of its facilities including its drug and nondrug evidence as of critical importance. DEA's physical security is based on redundancy of security systems which allow the complete failure of as many as two complete systems without jeopardizing the security of personnel or DEA property including evidence. All DEA laboratories have either experienced a comprehensive physical security survey or a formal courtesy visit by a competent security professional to apprise the laboratory director of any serious faults which might exist in the laboratory security within the last twelve months. Upgrades have been recommended because of the age of current equipment or changes in security technology. None has been required because of existing inadequate security.

See comment 9.
Now on pp. 10-11.

See comment 2.

On page 12, GAO indicates that instances of improperly stored evidence were noted. "Overcrowded evidence vaults" is provided as an example of improper storage of evidence. However, overcrowded evidence vaults do not constitute improper storage of evidence. The fact that the evidence may be stored in stacks on the floor is a result of space constraints, but does not increase the potential for theft, misuse, and loss of evidence as indicated in the report. Furthermore, it does not violate any DEA protocols. All of the evidence examined by GAO was stored inside of the vaults and was in a sealed, secure condition.

DEA recognizes that the evidence vaults at some locations are overcrowded and need to be enlarged. DEA is addressing this issue through the pending construction of five new laboratory facilities with larger evidence vaults. With the exception of the Northeast Laboratory, all of the laboratories included in this report are slated for new facilities. It is anticipated that construction of the new laboratories will be completed within two and one-half years. Additionally, DEA SF has been proactive in getting old evidence destroyed to create more vault space. As a result of this effort, the amount of evidence on hand at the end of fiscal year 1999 was nine percent less than at the end of fiscal year 1998.

See comment 10.

Moreover, GAO did not recognize the process by which DEA handles bulk evidence, which helps to explain why "deteriorating" packaging that is "overcrowding" the evidence vault may be held. The

DOJ bulk evidence destruction regulations, as codified at 28 C.F.R. § 50.21 (1998), provides the mechanism for DEA to timely destroy bulk drug exhibits, a practice which has received the imprimatur of the federal courts. *(See California v. Trombetta*, 467 U.S. 479, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984); *Arizona v. Youngblood*, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988)) (destruction of contraband pursuant to valid regulation does not violate due process, or the right of confrontation); *United States v. Sherrod*, 964 F.2d 1501, 1507 (5th Cir. 1992) (Defense claim that destruction of methamphetamine mixture and containers violated due process and confrontation rejected) ("We hold that the destruction of the methamphetamine mixtures (other than the retained samples) and their containers did not deprive the defendants of their constitutional rights."). But DEA is not the only party to the destruction of evidence. Many times evidence is held either at the behest of a U.S. Attorney's Office, by court order, or pending destruction.

See comment 2.
Now on p. 11.

GAO reports on page 13 that the tape used to seal boxes was deteriorating. In meetings with GAO, it was explained that during annual evidence inventories, every piece of evidence is examined and retaped or repackaged, if warranted. In addition, any time a package is discovered with failing or deteriorating packaging, it is immediately repackaged or resealed. Although GAO noted instances of deteriorating tape used to seal packages, it did not report any instances of unsealed evidence packages.

See comment 11.
Now on p. 12.

In addition, many of the issues identified by GAO were timeliness or performance issues which do not affect the accountability or integrity of evidence. On page 15, GAO reports that chemists had retained evidence after analysis for an average of 10 working days. Although DEA strives to accomplish the self-imposed five-day turnaround time, in some cases this cannot be achieved due to conflicting factors encountered by the chemists. After analysis, the chemists may retain the evidence until the supervisor reviews the worksheet, usually a day or two later. If, during this period, the chemist is needed away from the laboratory, the evidence remains secure in the in-process vault until the chemist returns. All analyzed evidence in the chemist's possession is maintained in a locked container in the in-process vault. Only the chemist has access to his/her individual locked container stored in the limited access in-process vaults. Although this policy will continue to be reinforced, situations beyond management's control occasionally preclude chemists from adhering to this standard. At the South Central Laboratory, specific procedures have been instituted to correct the problem identified by GAO.

See comment 12.

The destruction of evidence within 90 days of receipt of the DEA-48 is another timeliness issue that does not affect the accountability of the evidence. Evidence that is awaiting destruction is properly numbered, identified, sealed, and held in the vault until the day of destruction. Upon removal from the vault, the seals on each numbered container are checked for integrity and each container inventoried. Prior to destruction, each container is again inventoried and seals reinspected. This detailed process ensures the integrity and accountability of evidence.

Several factors outside of the laboratories' control many times prevent exhibits from being destroyed within the 90 days, i.e., problems with the incinerator, incomplete DEA-48s, evidence in court, etc. Nevertheless, DEA has and will continue to devote resources to ensure the timely destruction of evidence. GAO's finding of only one case being destroyed after 90 days of receipt of the DEA-48 is a strong indication of DEA efforts in this area.

See comment 10.
Now on p. 13.

On page 16, two of five bulk exhibits tested by GAO did not have the DEA Letter of Intent to Destroy notification included in the laboratory file. Letters of Intent to Destroy are prepared and sent to the Assistant U.S. Attorney (AUSA) by the field divisions. The copy that is given to the laboratory to be included in the laboratory case file is a courtesy copy provided by the case agent. The official copy is retained by the case agent in the investigative file. As a result, the fact that a laboratory case file may not have a letter does not indicate that a letter was not sent to the AUSA. In addition, if evidence submitted to the laboratory is accompanied by a DEA-48, the Letter of Intent to Destroy at that point has no meaning and a copy would not be needed in the laboratory case file. This issue is a peripheral performance issue which does not affect the accountability of evidence.

See comment 4.
Now on p. 14.

On page 19, GAO reports that 3 of the 236 DEA-7s reviewed were missing the check mark indicating whether the seals were intact, and 1 was missing the evidence custodian's signature. This represents less than two percent frequency of error and is attributable to administrative oversight. As stated earlier, several redundant systems are used to ensure that the integrity and accountability of the evidence is maintained at all times. When evidence is received in the laboratory, four separate accountability systems are used to document the receipt of the evidence. When an administrative oversight occurs in one of the systems, the remaining systems ensure that accountability is maintained.

See comment 4.

The errors identified by GAO with regard to the DEA-86 are administrative or performance issues and have no effect on the accountability of the evidence. The missing worksheets in two of the exhibits were a result of an administrative filing error. One of the worksheets in question has subsequently been found and placed in the case file. The three worksheets missing the reviewer's initials were a result of administrative oversight and do not affect the accountability of the evidence. During self-inspections, a thorough examination of the worksheets is conducted to ensure that the DEA-86 is completed according to policy. In addition, each laboratory has a peer review committee that periodically examines worksheets from an administrative as well as technical perspective. These two quality control systems have been instituted to ensure that issues such as those identified by GAO are kept to a minimum. GAO's finding of less than two percent of the worksheets containing an administrative error is indicative of the success of these programs.

See comment 13.
Now on p. 15.

On page 20, GAO reports that 10 of the 77 exhibits examined, where evidence had been transferred outside the laboratory, were missing DEA-12s. All laboratories have tracking systems in place to alert management when DEA-12s have not been signed and returned after evidence has been sent out of the laboratory. In cases where the laboratory determines that a DEA-12 has not been returned, the agent is notified and it is verified that the evidence reached its destination.

See comment 14.

The missing DEA-12s cited by GAO in one DEA internal inspection report related to special programs exhibits and not exhibits that were transferred outside the laboratory for court or other enforcement purpose. The DEA-12s in these instances were not missing. They were being filed in one central file for all special program mailings and not in the individual corresponding case file. This issue has since been corrected and copies of the DEA-12s for special program exhibits are being placed in their respective case files.

See comment 15. Now on p. 16.

GAO reports on page 21 that two of four bulk seizure files reviewed were missing the required photographs. One of the bulk seizures in question fell below the bulk threshold of 10 kilograms and thus pictures were not required. It should be noted that photos taken by the laboratory of bulk seizures are in addition to the pictures taken by the case agent. For court purposes, the agents' photos are generally used to show the extent of the seizure.

See comment 16. Now on p. 18.

All of the STRIDE issues identified on pages 25 and 26 are timeliness and performance issues that do not relate to accountability of evidence. Nonetheless, each of the laboratories performs a monthly STRIDE Quality Control check to ensure the accuracy of the data entered in STRIDE. In addition, during the annual inspection cycle of each laboratory, a more thorough quality control check is conducted on a much larger sample of records. By using these quality control systems, errors in STRIDE are detected and corrected.

See comment 17. Now on pp. 19-20.

On page 28, GAO reports that inaccurate recording of weight decreases DEA accountability over such evidence. In most cases, the imprecise recording of weights on DEA-7s are for evidence which is received in the mail. For cases submitted to the laboratory in person, the agent is usually asked to reweigh the evidence if the weight is inappropriately recorded. For cases received in the mail, it is standard procedure to accept the evidence with a slightly imprecise weight recorded, as long as the evidence is sealed and properly marked. It is DEA's opinion that the delay and risk in mailing the evidence back to the agent outweighs the significance of a minor weight difference due to rounding or exactness in reporting. It should also be noted that the description of the evidence on the DEA-7 must match the physical evidence before the laboratory will accept it.

For other agency submissions, a similar scenario occurs to that described above. Many other agency exhibits are submitted to the laboratory using a variety of different forms. Most of these forms do not require that a gross weight of the exhibit be recorded. If the evidence is mailed to the laboratory, rather than return the evidence, the laboratory will accept it if no other problems exist.

See comment 18. Now on pp. 22-23.

The unexplained weight difference reported by GAO on pages 31 and 32 could be a result of a number of factors; however, it should be noted that all of the exhibits examined by GAO were in a sealed condition when reweighed. To amplify on this subject, nearly all illicit drugs are manufactured/ processed using various methods, conditions, and chemicals. For example, most cocaine HCl is processed in jungles where the methods and chemicals used can vary considerably. Opium, which is used to synthesize heroin, is cultivated, harvested, and processed in a number of different regions in the world using a variety of methods. Crack cocaine is cooked and mixed with several different ingredients. As a result of these differences, determining the exact cause of weight changes in drugs is extremely difficult. In addition, the drug packaging and the conditions in which the drugs are stored will also have an affect on the weight over time.

The two studies cited by GAO regarding weight changes in drugs were conducted in controlled environments using drugs of known origin and composition. Notwithstanding these two studies, our scientific observations over 30 years of handling illicit drug evidence clearly show that weight changes result from a variety of uncontrollable environmental factors.

GAO Recommendations

GAO recommends that the Attorney General require that the DEA Administrator take the appropriate steps to reinforce DEA's adherence to existing policies regarding:

- properly storing bulk marijuana evidence in designated approved areas and sealing weapons in evidence bags;

Response: As recommended by GAO, DEA is preparing a cable to remind the field divisions of the importance of adhering to these DEA policies and procedures.

- destroying drugs in a timely manner to alleviate overcrowded drug evidence vaults and reduce the additional risk of theft since these drugs are no longer needed as evidence;

See comments 9 and 10.

Response: While DEA does not agree with GAO's correlation between timely destructions and risk of theft, DEA will remind all laboratories and field divisions to more closely monitor compliance with the requirement for the timely destruction of evidence.

- chemists returning drug evidence to the evidence vault in a timely manner after analysis so that evidence is not maintained for excessive amounts of time in a more accessible area than that of the vault;

Response: DEA SF will instruct all laboratories to more closely monitor compliance with the requirement to return evidence to the vault five days after being analyzed. Additionally, DEA SF will monitor compliance through inspections, internal laboratory peer reviews, and performance evaluations.

- requiring that two signatures be recorded on evidence labels prior to acceptance by laboratory and division office evidence custodians;

See comment 19.

Response: DEA will continue to reinforce compliance with this policy. However, in cases where the evidence is mailed to the laboratory and only one signature is recorded on the label, we are reluctant to return evidence due to the added risk and delay in mailing the evidence back.

- maintaining complete and properly reviewed documentation in the laboratory seizure files and promptly entering accurate information into STRIDE;

Response: DEA SF will instruct all laboratories to more closely monitor compliance with the requirement to have complete and accurate case files. DEA SF will also instruct all laboratories to more closely monitor compliance with entering data into STRIDE promptly and accurately. Additionally, DEA SF will monitor compliance through inspections and annual STRIDE Quality Control checks.

- identifying any discrepancies--between evidence maintained in the vault and the location of evidence per the Nondrug Evidence System--during annual inventories and promptly researching the discrepancies and updating the appropriate records;

Response: DEA will continue to highlight the importance of its annual inventories and proper reconciliation of all discrepancies and the proper updating of its inventories. DEA will continue to monitor this during its on-site inspections of nondrug evidence.

- not specifying the contents on packaging slips when using commercial carriers;

See comment 20.

DEA believes that the one case cited by GAO is an aberration and that this has not been an issue; nonetheless, DEA is considering whether it should institute a written policy regarding this matter.

- maintaining complete and accurate information in bulk marijuana logbooks;

Response: Enclosed is a cable issued on March 16, 1999, to DEA's field offices regarding the maintenance of this information (Enclosure 4).

- chemists and agents recording weights in accordance with DEA policy and chemist obtaining an independent written verification if weight differences, over the DEA established threshold, exist between the weight of the drug evidence reported by the agent and that weighed by the chemist;

Response: DEA SF will instruct all laboratories to more closely monitor compliance with requirements regarding reporting and verification of weights. Additionally, DEA SF will monitor compliance through inspections and internal laboratory peer reviews.

Further, we [GAO] recommend that the Attorney General require that DEA modify existing DEA policy to include guidance for:

- agents to obtain written certification from an independent party experienced in handling firearms, that firearms and other weapons being submitted for storage in the vault are rendered safe prior to being stored;

See comment 21.

Response: DEA has requested the policy guidance used by the FBI and is reviewing its policy regarding written independent certification. DEA believes it is important to note that GAO found all of its weapons rendered in a safe condition.

- requiring that weights be recorded on the forms used to transfer bulk marijuana exhibits prior to acceptance by evidence custodians;

See comment 2.

Response: DEA requires that the weights be recorded on the forms used to transfer bulk marijuana exhibits. Enclosed are the appropriate cites from the DEA Agents Manual (Enclosure 5).

- requiring that weights be recorded on the forms used to transfer non-DEA exhibits to a laboratory prior to acceptance by the evidence custodian and/or require chemists obtain a witness verification if no weight is recorded on the transfer form;

Response: DEA SF will develop policy requiring chemists to obtain a witness verification for non-DEA exhibits submitted to the laboratory without a gross weight.

Thank you for the opportunity to present DEA's concerns and corrections regarding GAO's draft report. We believe that GAO's review, while emphasizing the risk factors of accounting for evidence, should emphasize that no DEA evidence has, in fact, been compromised. As recommended, DEA will continue its diligence in the monitoring of its weapon and drug evidence.

See comment 22.

Sincerely,

Donnie R. Marshall
Acting Administrator

Enclosures

The following are GAO's comments on the Drug Enforcement Administration's letter dated October 21, 1999.

GAO Comments

1. This review occurred in June 1999 with accreditation being granted in September 1999, subsequent to our review. The review covered DEA's 8 laboratories, but none of the division offices.

2. See "Agency Comments and Our Evaluation" section.

3. We did note in our report that we requested and reviewed a copy of the sections of the most recent DEA internal inspection reports for the division offices and laboratories in existence at the time of our fieldwork that cover procedures and internal controls related to seized drugs and weapons. In addition, in several places in this report, we noted the period of time covered by these inspections. As we reported, because we received the sections of the internal inspection reports near the end of our fieldwork, we did not follow-up with the division offices or laboratories to determine the extent to which noted deficiencies had been corrected.

4. In order to provide balance to the report, we also reported instances where we only found a few discrepancies. For the cases cited here by DEA where we noted three or fewer discrepancies, we used language such as, we "found substantial compliance with the policy, but noted a few exceptions." As noted throughout the report, we identified numerous discrepancies in other key areas.

5. The report was clarified to include that chemists also document that they have verified that the seals are intact by checking the appropriate box on the DEA 86.

6. As noted in our report, at the South Central Laboratory, we were informed that there were cameras that monitor vault activity that were not operational. In addition, at our exit conference with DEA, agency officials provided documentation indicating that after our visit the two cameras in question had subsequently been fixed.

7. We reported that an official indicated that the vault alarm system at the Northeast Laboratory in New York had been fixed. We also noted that to confirm this, we had asked for the more recent inspection report for this laboratory, but as of the completion of our fieldwork, it had not been provided to us. After our exit conference with DEA, we were provided

further documentation relating to this issue. However, the documentation did not clearly demonstrate that the alarm had been fixed. In addition, along with the comments on our draft report, DEA provided a Self-Inspection Status Report (instead of the requested internal inspection report). However, this report did not specifically indicate that the work was performed and whether the problem was resolved.

8. We reported that we observed physical safeguards that are in place to control and monitor access to and use of drug and weapon evidence. However, due to the sensitive nature of the evidence, we did not perform any comprehensive tests to verify the operation of the specific physical safeguards because we did not want to risk compromising any of the evidence that may be needed for prosecution purposes. The specific physical safeguard issues listed in this report are weaknesses we identified through observation or inquiry of officials, or were reported in DEA's internal inspection reports. Since we were not previously informed of the physical security surveys or formal courtesy visits referred to in DEA's comments and have not been provided any documentation showing the scope of such reviews, we cannot determine whether the reviews addressed the control areas we reported on.

9. We reported that due to space constraints in the drug evidence vaults at two of the four laboratories we visited, we observed boxes that had been stacked on the floor such that the lower boxes were being crushed, increasing the potential for access to the contents and therefore increasing the potential for theft, misuse, or loss. DEA stated that it recognizes that the evidence vaults at some locations are overcrowded and need to be enlarged and has plans to construct several new laboratory facilities with larger evidence vaults to address this issue.

10. Our report does describe the process by which DEA handles bulk evidence, including the recognition that other parties influence how bulk evidence is handled and when it is destroyed. We did not take issue to there being circumstances for which bulk evidence may need to be held for extended periods of time, but requested that documentation supporting the extension be provided. Specifically, for bulk exhibits tested, we requested that DEA provide either a (1) DEA 48, authorizing the destruction or (2) Letter of Intent to Destroy, which is sent to the U.S. Attorney's Office, along with the U.S. Attorney's response authorizing DEA to retain bulk amounts. For two of the five bulk exhibits tested, the letters authorizing DEA to maintain amounts above certain thresholds or the forms authorizing the destruction were not provided. In addition, 1 of 16 exhibits

that had been authorized for destruction had not been destroyed within the 90 days as required by DEA policy. This exhibit had been authorized for destruction but was not destroyed until over 5 months after approval was obtained.

11. We recognize that situations beyond management's control can occasionally preclude chemists from adhering to the requirement that drug evidence normally be returned to the vault within 5 working days after the chemist's analysis. However, returning evidence to the vault promptly ensures that chemists do not maintain evidence for excessive amounts of time in a more accessible area than that of the vault. In addition, 17 of the 20 reported instances occurred at the South Central Laboratory, indicating a more significant problem at this particular laboratory. DEA acknowledged that it would continue to reinforce the 5 working day policy and that specific procedures have been instituted to correct the problem at the South Central Laboratory.

12. The timeliness issues addressed in this report primarily affect the controls over the safeguarding of evidence. Destroying evidence within 90 days of receiving approval as required by DEA policy conserves limited vault space and eliminates the additional inherent risk of theft of drugs that are no longer needed as evidence. DEA indicated that it will continue to devote resources to ensure the timely destruction of evidence.

13. During our testing at each DEA location visited, we met with agency officials and discussed our findings and provided them opportunities to respond to our findings and to provide documentation that could resolve the discrepancies. We requested, but were not provided, DEA 12s for 10 of the 77 exhibits selected for our review that had been transferred to an individual outside the laboratory. In addition, we were not provided with any other documentation acknowledging receipt of the transferred items by the recipient.

14. At our exit conference with DEA, agency officials indicated that the issue in the internal inspection reports had been corrected, but did not indicate that the DEA 12s in question related to special program exhibits and were being filed in one central file, not in the individual corresponding case files. DEA states that this issue has since been corrected and copies of the DEA 12s for special program exhibits are being placed in their respective case files.

15. As noted in comment 13, during our testing at each DEA location visited, we met with agency officials and discussed our findings and provided them opportunities to respond to such findings and to provide documentation that could resolve the discrepancies. We requested, but were not provided the required photographs for two of the four bulk seizure files we reviewed, both of which exceeded the 10 kilogram threshold.

16. Ensuring that data are promptly and correctly entered into STRIDE provides program managers with more accurate and useful information. However, as we reported, we found 15 instances where the data in STRIDE did not agree with supporting documentation and therefore diminished DEA's accountability over the related evidence.

17. The two reported examples relate to exhibits that were submitted to the laboratory in person and not mailed. Regardless of the method of delivery, it is important that the chemist, as required by DEA policy, obtain a witness' verification when differences above the established threshold exist to ensure that possible arguments over such differences by the defense or submitting agent are mitigated.

18. We recognize that certain uncontrollable environmental factors may cause weight differences that do not follow trends. However, DEA could not specifically explain the weight decreases for several differences we identified, including differences relating to two exhibits that had been authorized for destruction and were therefore no longer needed as evidence. For example, the weight for one cocaine exhibit that had been analyzed 3 years prior to our testing had decreased by 6 percent or approximately 300 grams. According to DEA officials, cocaine typically absorbs moisture and gains weight. In another example, a marijuana exhibit weighed about 25 pounds less than (or about half) the weight recorded when the drug was received at the division office. DEA officials agreed that the decrease in weight seemed excessive, but were unable to provide a specific explanation for the difference. Further, as noted in our agency comments and evaluation section of this report, we identified certain conditions that diminish the effectiveness of DEA's sealing of evidence procedures.

19. DEA concurred with our recommendation to reinforce its policy that requires two signatures be recorded on evidence labels prior to acceptance by laboratory or division office evidence custodians. DEA stated that it will reinforce the policy, but it is reluctant to return evidence that is mailed to

the laboratory with only one signature due to the added risk and delay of mailing evidence back. We agree that mailing evidence back to obtain a second signature may not be appropriate, however, the occurrence of this situation should decrease if stronger adherence to the policy is achieved.

20. A Miami Division Office official provided us with a copy of a packaging slip showing that one of the firearms in our sample had been transferred from Miami to another DEA office. We reported that the contents of the package, listed as "3 guns, money, and jewelry," was recorded on the packaging slip which was attached to the outside of the package. We recommended that DEA adhere to a previously existing policy in its *Agents Manual*, Section 6663.43, which states that the procedures set forth for the domestic delivery of drug evidence shall also apply to nondrug property. The procedures for mailing drug evidence specifically state that the outer wrapping should bear no indication as to the nature of the contents.

21. Our primary objective in testing the controls over the safeguarding of weapons was to determine whether control procedures existed and were being followed. As we reported, we found two handguns that had not been sealed in evidence bags as required by DEA policy and knives that were stored in a zipper bag that could be easily opened. The scope of our testing did not include determining if the weapons themselves were rendered safe.

22. The scope of our review was designed to determine whether weaknesses in controls existed that increase the risk that evidence could be compromised for federal prosecution purposes. It was not our intent to specifically determine whether the evidence had in fact been compromised.

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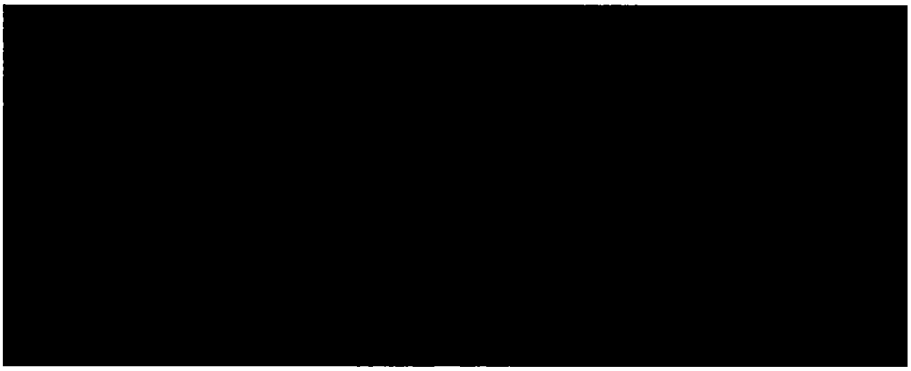

Exhibit 7

Privacy Impact Assessment
for the

Investigative Management Program and Case Tracking System (IMPACT)

February 4, 2008

Contact Point
Office of Information Systems
Drug Enforcement Administration
202-307-1000

Reviewing Official
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Introduction

Investigative Management Program and Case Tracking System (IMPACT) is a web-based case management system to replace the existing "paper-based" system. The principal business goal for the system is to improve mission performance and achieve greater operational efficiency relative to the establishment, recording, accessibility, and analysis of information pertaining to DEA investigative activities.

Section 1.0
The System and the Information Collected and Stored within the System.

The following questions are intended to define the scope of the information in the system, specifically the nature of the information and the sources from which it is obtained.

1.1 What information is to be collected?

The information to be collected is:

- Name
- Date of Birth
- Alias Names
- Social Security Number (SSN)
- Place of Birth
- Citizenship
- Alien Status
- Race
- Ethnicity
- Sex
- Color Hair
- Height
- Color Eyes
- Weight
- Address
- Phone Number
- Identifying Characteristics

- Employer Information (Company Name and Address, Phone Number, Position Title, Supervisor Name and Supervisor Phone Number)
- Passport Number
- Name on Passport
- Driver's License Number
- Name on License
- Family Information

1.2 From whom is the information collected?

The information may be obtained from suspects, co-conspirators, witnesses, and other investigative sources.

Section 2.0
The Purpose of the System and the Information Collected and Stored within the System.

The following questions are intended to delineate clearly the purpose for which information is collected in the system.

2.1 Why is the information being collected?

The system's information is being collected for the establishment, recording, accessibility, and analysis of information pertaining to DEA investigative activities.

2.2 What specific legal authorities, arrangements, and/or agreements authorize the collection of information?

21 U.S.C. § 801 *et seq*, 28 U.S.C. § 534 and 28 C.F.R. §§ 0.100 and 0.101 authorize the collection of information.

2.3 Privacy Impact Analysis: Given the amount and type of information collected, as well as the purpose, discuss what privacy risks were identified and how they were mitigated.

The risks identified are the risk of unauthorized access to or use of defendant/suspect personal information and the risk of unauthorized theft of back-up tapes. Access to the building where the system is housed is protected by physical building security, including security guards, access badges, and security cameras. Access to the system itself is protected by authentication controls, role-based access controls, and system auditing.

Access to individual electronic case files will be limited to those authorized personnel who manage and have direct control over case file information, including their supervisors who have a legitimate need to review the file. Sworn law enforcement officers are the only individuals who are given access to the system. These individuals have accepted the rules of behavior regarding the proper handling of DEA paperwork and data, which mitigates the risk of unauthorized use or disclosure of the information. To further prevent unauthorized use by employees, audit logs are kept and checked at regular intervals. Users of all DEA systems must certify on a yearly basis by completing DEA security awareness training.

Section 3.0
Uses of the System and the Information.

The following questions are intended to clearly delineate the intended uses of the information in the system.

3.1 Describe all uses of the information.

The information is used to support the investigation and prosecution of drug cases and related offenses.

3.2 Does the system analyze data to assist users in identifying previously unknown areas of note, concern, or pattern? (Sometimes referred to as data mining.)

No

3.3 How will the information collected from individuals or derived from the system, including the system itself be checked for accuracy?

DEA conducts thorough investigations, which ensure the accuracy of the information in the system. DEA adds new and updated investigative information to the system as that information is obtained. Additionally, supervisors review and approve the information that agents enter into the system.

3.4 What is the retention period for the data in the system? Has the applicable retention schedule been approved by the National Archives and Records Administration (NARA)?

Disposition standards for system records will be implemented in accordance with approved records retention schedules.

3.5 Privacy Impact Analysis: Describe any types of controls that may be in place to ensure that information is handled in accordance with the above described uses.

The system has authentication controls and role-based access controls. Auditing is used to track user logs. A process exists for both user provisioning and cancellation of accounts in a timely fashion. Additionally, users of all DEA systems must certify themselves on a yearly basis by completing DEA Security Awareness Training.

Section 4.0
Internal Sharing and Disclosure of Information within the System.

The following questions are intended to define the scope of sharing both within the Department of Justice and with other recipients.

4.1 With which internal components of the Department is the information shared?

The information is shared with US Attorneys and, on a need-to-know basis, it is shared with these Federal Law Enforcement Agencies: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Federal Bureau of Investigation (FBI), US Marshals, and Federal Bureau of Prisons (BOP). It is also shared with local Task Force Officers (TFOs) who have been assigned to DEA's High Intensity Drug Trafficking Area (HIDTA) offices. These officers have been deputized as DEA federal agents.

4.2 For each recipient component or office, what information is shared and for what purpose?

All information collected may be shared with the entities listed in question 4.1 to support the continued investigation of alleged drug offenses and the prosecution of those cases and related offenses in courts. The personally identifiable information of confidential informants is not shared.

4.3 How is the information transmitted or disclosed?

Information is provided in hard-copy form via a tracked courier.

4.4 Privacy Impact Analysis: Given the internal sharing, discuss what privacy risks were identified and how they were mitigated.

No components outside of DEA have direct access to the system. Law enforcement officers and Group Assistants are the only individuals who are given access to this information. These individuals have accepted the rules of behavior regarding the proper handling of DEA paperwork and data, which mitigates the risk of unauthorized use or disclosure of the information. Each user is required to review and acknowledge the DEA IT Rules of Behavior annually as part of the online IT security training. Given the limited distribution of the information in the system, the absence of access to the system itself, and the understanding of the rules of behavior, privacy risks are limited.

Section 5.0
External Sharing and Disclosure

The following questions are intended to define the content, scope, and authority for information sharing external to DOJ which includes foreign, Federal, state and local government, and the private sector.

5.1 With which external (non-DOJ) recipient(s) is the information shared?

On a need-to-know basis, the data may be shared with select Federal, State, Local, and Tribal law enforcement officers.

5.2 What information is shared and for what purpose?

Case information is shared. The purpose of sharing this information is to further other case investigations and to prosecute drug and related offenses in courts.

5.3 How is the information transmitted or disclosed?

Information is shared in hard-copy form via a tracked courier.

5.4 Are there any agreements concerning the security and privacy of the data once it is shared?

No. Data is given only to trusted law enforcement officers. These officers have accepted the rules of behavior regarding the proper handling of DEA paperwork and data.

5.5 What type of training is required for users from agencies outside DOJ prior to receiving access to the information?

Data is given only to trusted law enforcement officers. DEA does not monitor training activities for users from agencies outside DEA.

5.6 Are there any provisions in place for auditing the recipients' use of the information?

No. There are no provisions in place for auditing law enforcement recipients' uses of system information.

5.7 Privacy Impact Analysis: Given the external sharing, what privacy risks were identified and describe how they were mitigated.

A risk of unauthorized disclosure of defendant/suspect personal information was identified. DEA law enforcement officers and Group Assistants are the only individuals who are given direct access to this information. These individuals, and the trusted law enforcement officers with whom they share this information, have accepted the rules of behavior regarding the proper handling of DEA paperwork and data, which mitigate the risk of unauthorized use or disclosure of the information. Given the limited distribution of the information in the system, the absence of access to the system itself, and the understanding of the rules of behavior, privacy risks are limited.

Section 6.0
Notice

The following questions are directed at notice to the individual of the scope of information collected, the opportunity to consent to uses of said information, and the opportunity to decline to provide information.

6.1 Was any form of notice provided to the individual prior to collection of information? If yes, please provide a copy of the notice as an appendix. (A notice may include a posted privacy policy, a Privacy Act notice on forms, or a system of records notice published in the Federal Register Notice.) If notice was not provided, why not?

DEA has published a Privacy Act System of Records Notice (SORN) for DEA's investigative records. No other notice was provided, and no other notice is required to be provided because the information in this system is collected during law enforcement activities.

6.2 Do individuals have an opportunity and/or right to decline to provide information?

Individuals about whom information in this law enforcement system is collected have neither an opportunity nor a right to decline to provide information. Exceptions to this general rule include information collected directly from individuals afforded rights under the Fifth Amendment and from individuals who may lawfully assert a privilege (e.g. attorney-client privilege, spousal privilege). Individuals from whom DEA requests information for this law enforcement system may decline to provide information.

6.3 Do individuals have an opportunity to consent to particular uses of the information, and if so, what is the procedure by which an individual would provide such consent?

Individuals from whom information in this law enforcement system is collected have no opportunity to consent to particular uses of the information provided. Individuals about whom information in this law enforcement system is collected have no opportunity to consent to particular uses of the information they provided.

6.4 Privacy Impact Analysis: Given the notice provided to individuals above, describe what privacy risks were identified and how you mitigated them.

The privacy risk identified would be the failure of persons to know their information may be collected and what it will be used for. DEA has published a Privacy Act System of Records Notice (SORN) for DEA's investigative records. The information in this notice includes entities with which and situations when DEA may share investigative records. This notice, therefore,

mitigates the risk that the individual will not know why the information is being collected or how the information will be used. No other notice was provided, and no other notice is required to be provided because the information in this system is collected during law enforcement activities and it is not practicable for any other notice to be given during these activities.

Section 7.0
Individual Access and Redress

The following questions concern an individual's ability to ensure the accuracy of the information collected about him/her.

7.1 What are the procedures which allow individuals the opportunity to seek access to or redress of their own information?

Individuals may make a request for access to their records under the Freedom of Information Act. Individuals may make a request for access to or amendment of their records under the Privacy Act. However, this system is exempt from the access and amendment provisions of the Privacy Act pursuant to 5 U.S.C. § 552a (j)(2) and (k)(1).

7.2 How are individuals notified of the procedures for seeking access to or amendment of their information?

Notice of individuals' rights under the Freedom of Information Act (FOIA) is given in Departmental regulations describing the procedures for making a FOIA request. Notice of individuals' rights under the Privacy Act is given through publication in the Federal Register of a System of Records Notice and in Departmental regulations stating Privacy Act exemptions and describing the procedures for making access/amendment requests.

7.3 If no opportunity to seek amendment is provided, are any other redress alternatives available to the individual?

No.

7.4 Privacy Impact Analysis: Discuss any opportunities or procedures by which an individual can contest information contained in this system or actions taken as a result of agency reliance on information in the system.

N/A.

Section 8.0
Technical Access and Security

The following questions are intended to describe technical safeguards and security measures.

8.1 Which user group(s) will have access to the system?

- Regular User - Full editing capabilities only to his own case information.
- Supervisor - Full editing capabilities to case information for all DEA Special Agents and TFOs within his group.
- Group Assistant - Full editing capabilities to case information for all DEA Special Agents and TFOs within the group.
- System Administrator – Full editing capabilities to all case information for all groups and can also add, remove, and edit user profiles.

8.2 Will contractors to the Department have access to the system? If so, please submit a copy of the contract describing their role with this PIA.

Contractors will not have access to the IMPACT application.

8.3 Does the system use "roles" to assign privileges to users of the system?

Yes. The system determines the user's role based upon the user profile that is stored in the database. When a user has successfully logged in, the system retains the user's role and adjusts the functionality as appropriate to that role.

8.4 What procedures are in place to determine which users may access the system and are they documented?

It is determined at the Group Supervisor level which end-users can do case work and administrative work. This procedure is documented in the User's Manual.

8.5 How are the actual assignments of roles and rules verified according to established security and auditing procedures?

Access to specific data is restricted by user classification (Group Assistant, System Administrator, Supervisor, and Regular User), as well as by membership in specific enforcement groups. This enforces access control to information with privacy implications to members of an enforcement group and their supervisors. Additionally, the detail level of the information available is limited by the user classification.

8.6 What auditing measures and technical safeguards are in place to prevent misuse of data?

User Accounts are Strong Password Protected. Oracle Auditing is turned on. There is no open physical access to servers; there is limited access to servers. The information is kept on a closed network. Authorized users have accepted rules of behavior, which include the proper handling of sensitive DEA paperwork and data. Users of all DEA systems must certify on a yearly basis by completing DEA security awareness training. Changes to roles and permissions are captured in audit logs.

8.7 Describe what privacy training is provided to users either generally or specifically relevant to the functionality of the program or system?

Users of all DEA systems must certify themselves on a yearly basis by completing DEA Security Awareness Training.

8.8 Is the data secured in accordance with FISMA requirements? If yes, when was Certification & Accreditation last completed?

Yes, the system is hosted within the DEA's Firebird SBU LAN and Firebird is fully Certified and Accredited (C&A) according to generally accepted guidelines for C&A of DOJ systems and re-accredited every 3 years. Certification was completed October 10, 2006.

8.9 Privacy Impact Analysis: Given access and security controls, what privacy risks were identified and describe how they were mitigated.

Threat: Unauthorized Access to the system

Risk: Low

Mitigation / Countermeasures:

Authentication controls. Initial access to the online system is limited to certified users with active system accounts on a closed Sensitive But Unclassified (SBU) local area network (LAN) called Firebird. Multi-layered security is in effect by virtue of the fact that users must first log on to Firebird and then log into the system successfully. An unauthorized user would have to have knowledge of both userid/password combinations in order to gain access to the system.

Role-based access controls. Access to specific data is restricted by user classification (Group Assistant, System Administrator, Supervisor, and Regular User) as well as by membership in specific enforcement groups. This enforces access control of information with privacy implications to members of an enforcement group and their supervisors. Additionally, the detail level of the information available is limited by the user classification.

Auditing is activated for the database to track the user logs.

A process exists for both user provisioning and cancellation of accounts in a timely fashion.

The system is hosted within the DEA's Firebird SBU LAN, which is fully Certified and Accredited (C&A) according to generally accepted guidelines for C&A of DOJ systems and re-accredited every 3 years. In addition, the system is scrutinized annually with system self-assessments that verify and validate that the appropriate security measures are being effectively deployed.

Threat: Unauthorized Disclosure of Reports Print-Out

Risk: Low

Mitigation / Countermeasures:

Reports can only be printed out by authorized users. Authorized users have accepted rules of behavior which include the proper handling of sensitive DEA paperwork and SBU data, whether it is a physical printout or access to the system.

Section 9.0
Technology

The following questions are directed at critically analyzing the selection process for any technologies utilized by the system, including system hardware, RFID, biometrics and other technology.

9.1 Were competing technologies evaluated to assess and compare their ability to effectively achieve system goals?

Yes. Technology evaluations are a function of the Enterprise Architecture (EA), and technologies are selected among a host of criteria including security requirements. This system is considered a part of the EA and therefore inherits the EA technologies. All technologies are vetted by the office of the Chief Technology Officer (CTO) through a defined and repeatable process for the selection of alternatives.

9.2 Describe how data integrity, privacy, and security were analyzed as part of the decisions made for your system.

1) Data integrity. Data integrity is maintained through best practices approaches for data management. This includes efforts for data standardization (entities/relationships), data structure (relational integrity model), and manual validation processes that exist to ensure the integrity of the data at the source of entry.

2) Privacy. Privacy is analyzed via C&A requirements as part of the application of security controls under NIST SP800-53. Decisions are made based on the need to address "secret" or "private" data such as SSN, DOB, etc. Once those data elements are defined, encryption of those items is included as a database function for data at rest.

3) Security. Security is a required part of the project plan and each project, including this one, addresses and includes security in the technical approach portion of the plan. Security and privacy are both reviewed and analyzed as part of the overall Web Infrastructure C&A for each system (minor application) with an annual self assessment. Finally, the Office of Security Programs routinely provides independent auditing against DEA security policies which provides ongoing risk mitigation to any discovered vulnerabilities as an independent entity outside of the project office.

9.3 What design choices were made to enhance privacy?

These design choices were made to enhance privacy: 1) Utilization of strict access controls at both the database and application layers using the principle of least privilege to provide access on an as-needed basis. 2) Encryption of the data at rest in the database. 3) Roles were designated to ensure that only certain subsets of data can be viewed.

Conclusion

Recognizing that access to case information should be limited for security and privacy reasons, this system was designed to limit access by password protected login accounts, user type definitions, and compartmentalization by enforcement group membership. Privacy risks in the system are controlled and minimized by separation of users, compartmentalization of functions, and monitoring/oversight activities. Due to security concerns associated with the system's data, significant security controls have been implemented.

Responsible Officials

_____/s/_____ _____

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Drug Enforcement Administration

_____/s/_____ _____

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Approval Signature Page

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