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OFFICE OF INSPECTOR GENERAL

CBP Needs Additional Oversight to Manage Storage of Illicit Drugs (REDACTED)

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Homeland
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March 26, 2021
OIG-21-18



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OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

March 26, 2021

MEMORANDUM FOR: Troy Miller
Senior Official Performing the Duties of the
Commissioner
U.S. Customs and Border Protection

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V**
Inspector General **CUFFARI** Digitally signed by
JOSEPH V CUFFARI
Date: 2021.02.04
10:01:30 -05'00'

SUBJECT: *CBP Needs Additional Oversight to Manage Storage of
Illicit Drugs* ~~Law Enforcement Sensitive~~

Attached for your action is our final report, *CBP Needs Additional Oversight to Manage Storage of Illicit Drugs* ~~Law Enforcement Sensitive~~. We incorporated the formal comments provided by your office.

The report contains four recommendations aimed at improving CBP's efforts to safeguard and manage illicit drugs stored inside its permanent vaults. Your office concurred with all four recommendations. Based on the information you provided in your response to the draft report, we consider the four recommendations open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions.

Please send your response or closure request to OIGAuditFollowup@oig.dhs.gov. Consistent with our responsibility under the *Inspector General Act of 1978, as amended*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the final report on our website, including your formal comments as an appendix to the report.

Please call me with any questions, or your staff may contact Thomas Kait, Acting Assistant Inspector General for Audits, at (202) 981-6000.

Attachment

cc: Todd C. Owen
Executive Assistant Commissioner
U.S. Customs and Border Protection

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DHS OIG HIGHLIGHTS

CBP Needs a Comprehensive Process for Conducting Covert Testing and Resolving Vulnerabilities

March 26, 2021

Why We Did This Audit

U.S. Customs and Border Protection (CBP) is responsible for storing and destroying illicit drugs seized by DHS law enforcement pending prosecution and sentencing of violators by the U.S. Department of Justice. We audited CBP's drug storage and destruction process because of concerns about safety and security risks related to illicit drugs. Our objective was to determine whether CBP effectively stores seized drugs in permanent vaults.

What We Recommend

We made four recommendations for CBP to improve the management of its processes to store seized drugs in its permanent vaults.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

CBP did not effectively store and destroy seized illicit drugs in its permanent vaults. Federal law requires CBP to destroy most seized drugs and retain samples as evidence to prosecute criminals. However, 86 percent of illegal drugs CBP stored in its vaults were greater than allowed quantities. Specifically, CBP stored more than 400,000 pounds of dangerous and toxic drugs such as cocaine, methamphetamines, and fentanyl that it should have destroyed. Further, CBP stored about 13,000 pounds of excess drugs for long periods — in some instances, for more than 20 years. This occurred because CBP routinely waived or circumvented its drug storage and destruction policies.

As a result, CBP's excessive and lengthy storage of large quantities of controlled substances created unnecessary safety and security risks. CBP also potentially incurred additional financial burdens to store, secure, inventory, manage, and process the excess drugs.

CBP Response

CBP concurred with all four recommendations. We consider the four recommendations open and resolved.

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Background

One of the Department of Homeland Security's critical functions is to protect the Nation by interdicting illicit drugs headed for the United States through air, land, or maritime borders. DHS leads the Nation's interdiction efforts using a multicomponent approach, including the United States Coast Guard, U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE).

CBP safeguards the U.S. borders from the illegal entry of people, weapons, contraband, and drugs. Each year, CBP seizes hundreds of thousands of pounds of illegal drugs entering the United States, and stores them in one of its 62 permanent seizure vaults. Figure 1 shows drugs stored in a CBP vault.



Figure 1. Drugs Stored in CBP Permanent Vault

Source: Office of Inspector General (OIG) photo

Between fiscal years 2014 and 2019, marijuana seizures decreased while seizures for more toxic and hazardous drugs such as cocaine, methamphetamines, and fentanyl increased. In July 2019, we reported CBP's failure to protect its employees from possible fentanyl exposure.¹ In the report, we noted that as little as two milligrams of



¹ Management Alert: *CBP Did Not Adequately Protect Employees from Possible Fentanyl Exposure*, OIG-19-53, July 16, 2019.



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fenntanyl could kill an individual. (See Figure 2.)² Table 1 identifies five common drugs and weights that CBP seized and stored in its permanent vaults from FY 2014 through FY 2019.

Table 1. Weights* of Common Drugs CBP Seized from FY 2014 – FY 2019

	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	Total
Marijuana	2,360,691	2,141,128	1,810,174	1,227,858	760,449	556,411	8,856,711
Cocaine	49,877	49,566	58,311	71,761	58,142	100,889	388,546
Methamphetamine	23,543	31,938	41,310	56,575	68,754	83,019	305,139
Heroin	4,962	6,541	4,790	4,351	5,773	6,235	32,652
Fentanyl	0	70	701	2,056	2,283	2,771	7,881
	<u>2,439,073</u>	<u>2,229,243</u>	<u>1,915,286</u>	<u>1,362,601</u>	<u>895,401</u>	<u>749,325</u>	<u>9,590,929</u>

* Weights are in pounds

Source: OIG analysis of CBP-reported enforcement statistics

CBP coordinates with DHS’ enforcement investigative branch, ICE, to process and manage drug seizure evidence. CBP’s *Seized Asset Management and Enforcement Procedures Handbook* (SAMEPH) contains standards that direct CBP and ICE personnel on how to process and manage seized drugs. While ICE investigates drug smuggling and trafficking activities, CBP stores and manages the seized drugs.

Additionally, ICE coordinates with the U.S. Attorneys’ Office (USAO) in the U.S. Department of Justice (DOJ) to determine whether it will prosecute a case. If the USAO elects to prosecute the case, ICE should submit the entire seizure (bulk) to a Drug Enforcement Administration (DEA) laboratory for analysis.³

The DEA laboratory analyzes seized drugs and separates them into two portions:

- 1) a sample, which CBP stores as evidence in a permanent vault, and
- 2) the remaining bulk amount, which CBP should destroy.

If the USAO chooses not to prosecute the case, CBP personnel stated ICE releases custody of the drug seizure to local law enforcement. According to CBP, if a local authority does not accept a drug seizure for storage and destruction, CBP will maintain custody of the drugs.

² In response to our management alert, CBP implemented our recommendation to provide guidance for handling and storing opioids such as fentanyl.

³ Except marijuana seizures exceeding 10 kilograms, which would be too large to be collected, handled, and disposed of in the same manner as other drugs. See U.S. Immigration and Customs Enforcement, *Homeland Security Investigations Evidence Handbook*, at p. 34.



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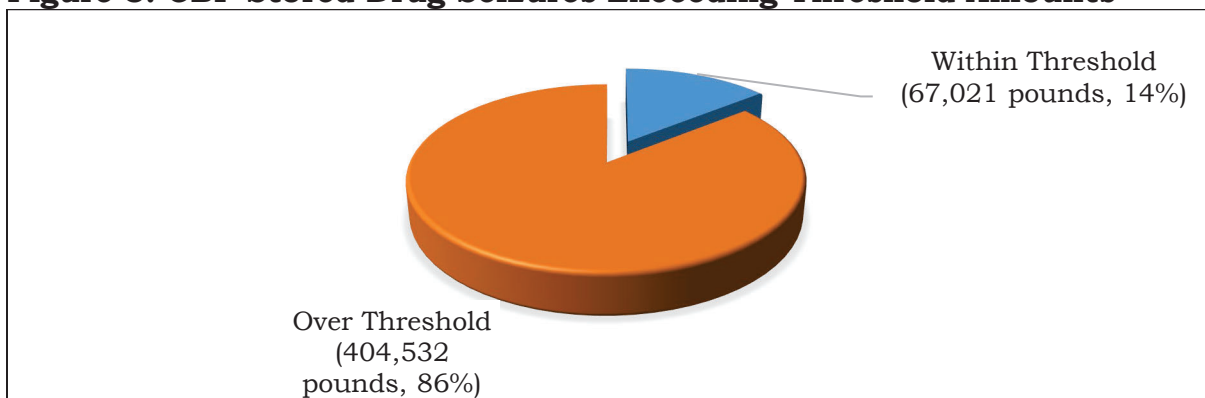
CBP Stored More Drugs than Required for Evidentiary Purposes

The SAMEPH, which incorporates Title 28 Code of Federal Regulations (C.F.R.) Section 50.21, *Procedures Governing the Destruction of Contraband Drug Evidence in the Custody of Federal Law Enforcement Authorities*, requires CBP to limit the quantity of drugs stored in its vaults to “threshold amounts.” (Appendix B contains threshold amounts for different types of drugs.) The SAMEPH also requires that CBP destroy the remaining drugs “to prevent the warehousing of large quantities of seized contraband drugs, which are unnecessary for due process in criminal cases.”⁴ This section of the C.F.R. is intended to prevent warehousing, or stockpiling, drugs because it presents inordinate security and storage problems, which create additional economic burdens on law enforcement agencies.⁵

A threshold amount is a quantity of a drug, taken from a seizure as a representative sample that is sufficient for evidence in a drug trial.

Despite the threshold requirements, CBP stored more drugs than necessary. Specifically, as of April 2019, CBP stored drugs for more than 41,900 seizures, consisting of approximately 472,000 pounds of drugs. Of that amount, more than 404,000 pounds (86 percent) were above established threshold amounts. Figure 3 shows that 86 percent of the drugs in CBP’s vaults exceeded established threshold amounts and could have been destroyed.

Figure 3. CBP Stored Drug Seizures Exceeding Threshold Amounts



Source: OIG analysis of CBP Office of Field Operations Drug Storage Location Report as of April 2019

⁴ SAMEPH § 4.1.18, *Pretrial Destruction of Bulk Drug Evidence*, Jul. 2011. See 28 C.F.R. § 50.21(c).

⁵ See 28 C.F.R. § 50.21(c).



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 Department of Homeland Security

In addition, CBP stored excess drug amounts exceeding its required threshold and for extended periods. In some instances, CBP stored excess drugs for more than 20 years. According to 1,184 case files we reviewed, between FYs 1984 and 2013, CBP’s Office of Field Operations (OFO) stored almost 13,000 pounds of drugs exceeding established threshold amounts in its vaults instead of destroying them. Table 2 shows the length of time and quantities of drugs that CBP stored for longer than 5 years.

Table 2. Drug Seizures Stored Longer than 5 Years

Length of Time Stored	Number of Drug Seizures	Weight* of Drug Seizures	Weight over Threshold
5–10 years (2013–2009)	895	14,354	11,104
11–20 years (2008–1999)	245	3,608	1,673
> 20 years (1998–1984)	44	765	219
Totals	1,184	18,727	12,996

*Weights are in pounds

Source: OIG analysis of CBP Drug Storage Location Report as of April 2019

Although the SAMEPH requires CBP to destroy drug quantities that exceed threshold amounts after 60 days of notifying the prosecutor, it may store the excess quantities if a prosecutor requests an exception to the drug destruction policy. CBP may approve a request, issue a waiver to the destruction policy, and store the entire seizure. However, regulations and DOJ guidance, under the *Controlled Substances Act*, mandate that “exception requests should be severely limited,” and discourage prosecutors from filing exception requests on the grounds they need the full seizures for jury appeal or other purely strategic purposes.⁶

Along with the Controlled Substances Act regulations and DOJ guidance, the SAMEPH also discourages waiving the drug destruction process. For example, the SAMEPH directs ICE Special Agents-In-Charge to automatically deny all requests for exceptions to the CBP destruction policy, because of “...the hazardous/toxic nature of bulk controlled substances, as well as the inherent safety and security risks involved with the storage of large

CBP policy directs ICE to automatically deny **all** requests for exception to the destruction policy because of “...the hazardous/toxic nature of bulk controlled substances, as well as the inherent safety and security risks involved with the storage of large quantities of controlled substances...”
 -SAMEPH Section 4.1.18

⁶ 28 C.F.R. § 50.21(f); see also *United States Attorney Manual*, Tit. 9-100.00 at §100 (Jan. 2020).



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OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

quantities of controlled substances....”⁷ Further, as a mechanism to limit the storage of excess drugs, the SAMEPH requires the Assistant Attorney General (AAG), Criminal Division, DOJ, to approve and submit the prosecutor’s appeal request.⁸

CBP stored drugs exceeding threshold amounts and for extended periods because it routinely circumvented its drug destruction process. For example, CBP officials approved waivers without ensuring ICE denied the requests to store drug amounts exceeding established thresholds or that requests included an AAG appeal. CBP officials stated that they did not need an approval letter from the AAG for small seizures. However, the SAMEPH does not make this distinction.

CBP officials further circumvented drug storage requirements by requesting that DEA laboratories return sample and bulk quantities combined as one package rather than two separate packages. Once a laboratory sent back a sample and bulk quantity packaged together, CBP had to store the entire combined package and retain it as evidence because the SAMEPH prohibits opening a DEA-sealed package.⁹ CBP officials stated they requested the comingled drugs because they wanted to lessen the number of packages received and stored at its vaults, which made the inventory process easier.

CBP Did Not Follow Its Case File Management Procedures

CBP did not follow its case file management procedures, which it designed to prevent storing excess drugs. The SAMEPH identifies the case file as CBP’s official paper record of a seizure case.¹⁰ Each case file must include all documents and correspondence, such as 60-day notification letters, drug destruction waiver requests, and approval or denial letters. Figure 4 illustrates CBP’s case management timeline from seizure date.

⁷ If a prosecutor disagrees with ICE’s denial to store more drugs than the threshold amount, the prosecutor must appeal the decision within 90 days to DOJ.

⁸ During the appeal process, CBP cannot destroy the drugs until the appeal is complete. If CBP has not received approval within 60 days from the AAG to continue storing the excess drugs, CBP is required to inform the prosecutor it will destroy the drugs as scheduled. If the prosecutor does not appeal the denial within 90 days, CBP must destroy the drugs. *See e.g.*, 28 C.F.R. 50.21(f)(3); *see also* SAMEPH § 4.1.18.

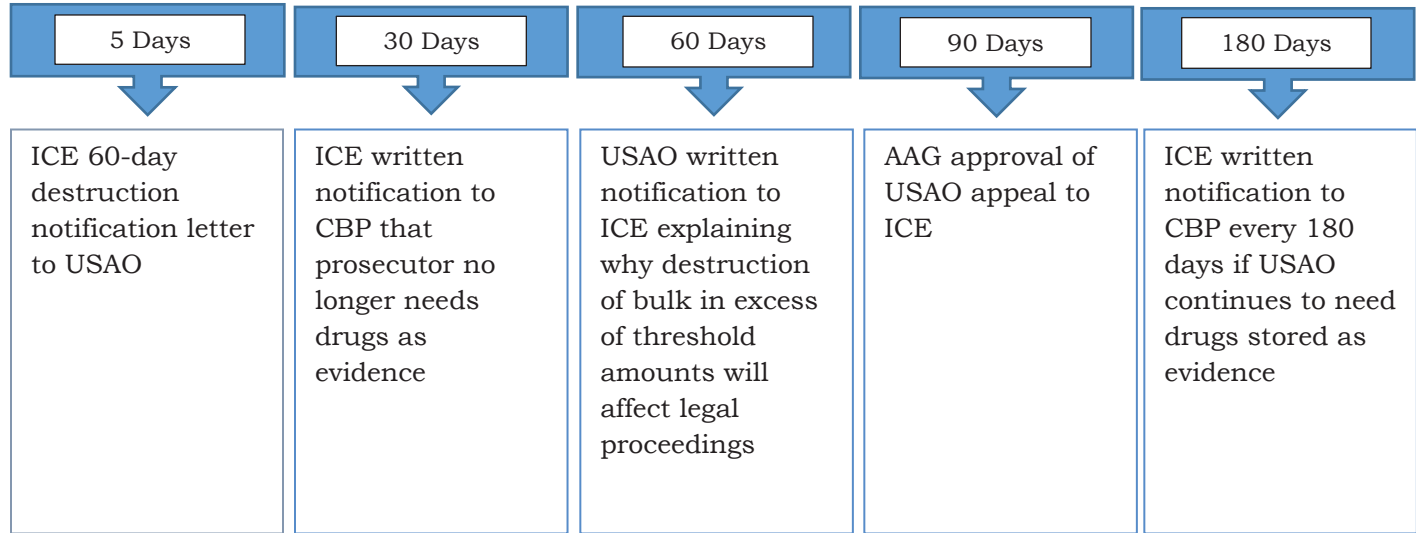
⁹ SAMEPH § 4.1.14.

¹⁰ SAMEPH § 19.6.3.



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Figure 4. Drug Destruction Case Management Timeline from Seizure Date



Source: OIG analysis of CBP's case management process

CBP did not always ensure case files were complete and contained the required documentation. We reviewed a random sample of 434 case files, and identified 103 files with more drugs stored than the required threshold amount. These cases required destruction waivers to store drug quantities exceeding the threshold amount. Of the 103 files, all were missing the required denial letters. In addition:

- 77 files (75 percent) were missing destruction waiver requests,
- 75 files (73 percent) were missing 60-day notification letters, and
- 69 files (67 percent) were missing exception request letters.

Although case files were missing these required documents, CBP continued to store the drugs.

Further, the SAMEPH requires that every 180 days ICE update CBP on whether to continue storing drugs as evidence. Otherwise, CBP should proceed with destruction. CBP established this requirement in the SAMEPH to prevent lengthy and unnecessary storage of drugs. However, CBP did not receive these updates for continued storage without requesting them. For example, of the 103 files above, in no instance did CBP promptly receive the 180-day update to continue to store drugs as evidence. Instead of destroying drugs as required, CBP continuously sought additional authorization to store them.



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Department of Homeland Security

Although CBP monitored its Seized Assets and Case Tracking System (SEACATS),¹¹ it did not ensure that paper case files contained the required authorization to continue to store excess drugs. CBP officials could not explain why they did not follow their case management process or why documents were missing from the case files. Because CBP did not follow its case management process, it contributed to storing unnecessary hazardous and toxic drugs, and put its employees at risk of exposure to them.

Conclusion

CBP's practice of storing excess drugs and for long periods led to stockpiling and creating a more hazardous and toxic environment for CBP employees. Because CBP officials did not follow internal policies, CBP stored more than 404,000 pounds of drugs that exceeded threshold amounts needed as evidence. Additionally, CBP stored drugs for more than 20 years in its permanent vaults. These actions potentially resulted in CBP incurring additional personnel costs necessary to manage the excess stored drugs, and increased the risk of accidents, theft, and harmful drug exposure. The additional personnel hours spent associated with long-term and excess drug storage could create an economic burden on CBP.

Recommendations

Recommendation 1: We recommend the CBP Executive Assistant Commissioner, OFO, ensure that requests to store drug amounts exceeding established thresholds are automatically denied and that an AAG appeal letter accompany any waiver requests.

Recommendation 2: We recommend the CBP Executive Assistant Commissioner, OFO, collaborate with drug seizing agents and testing laboratories to create an interagency agreement specifying that laboratories will return the threshold amount and the bulk drugs packaged separately so that CBP can destroy the bulk, or excess amount.

Recommendation 3: We recommend the CBP Executive Assistant Commissioner, OFO, develop additional controls to ensure case files are complete and contain all the required documentation to store excess drugs.

Recommendation 4: We recommend the CBP Executive Assistant Commissioner, CBP, analyze paper case files from FY 2013 and older to

¹¹ SEACATS is CBP's electronic repository for seized property inventory and case processing information related to arrests and seized property.



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determine whether all the stored drugs are necessary as evidence and destroy excess quantities.

Management Comments and OIG Analysis

CBP concurred with all four recommendations. We included a copy of CBP's management comments in their entirety in Appendix A. We also received technical comments on the draft report and made revisions as appropriate.

We disagree with CBP's assessment that this report contains inaccuracies and misleading representations. Most notably, CBP stated that we did not provide any specific instances or case numbers to support our overall conclusion so CBP could verify our findings. However, during the audit, we provided all of the case numbers to the relevant CBP vaults to verify the quantities of drugs stored exceeding threshold amounts.

We consider all four recommendations open and resolved. A summary of CBP's management responses and our analysis follows.

CBP Comments to Recommendation #1: CBP concurred with our recommendation. CBP will issue a memorandum to the Field Offices to ensure an AAG appeal letter will accompany any waiver request. The Assistant U.S. Attorney appeal letter will be uploaded into SEACATS. Estimated Completion Date (ECD): April 30, 2021.

OIG Analysis of CBP's Response: CBP's proposed action is responsive to the recommendation. We consider the recommendation open and resolved until CBP issues a policy memorandum that requires all waiver requests for CBP to store drugs in quantities exceeding threshold amounts be accompanied by an approved letter of appeal from the AAG and uploaded into SEACATS.

CBP Comments to Recommendation #2: CBP concurred with our recommendation. CBP OFO will pursue an interagency agreement to have DEA laboratories return the threshold amount and bulk drugs packaged separately. This will aid the process of destroying bulk seizures and maintain the threshold sample as evidence. ECD: June 30, 2021.

OIG Analysis of CBP's Response: CBP's proposed action is responsive to the recommendation. We consider the recommendation open and resolved until CBP provides an interagency agreement or written request to DEA laboratories to return the threshold amount and bulk drugs packaged separately.



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OFFICE OF INSPECTOR GENERAL
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CBP Comments to Recommendation #3: CBP concurred with our recommendation. CBP has existing policies that require case files to be complete and contain all required documentation to store excess drugs. However, CBP acknowledges deficiencies in not having all the documents in the case files. CBP OFO will implement new procedures for quarterly oversight reviews of seizure case files to ensure that all documents are in the case file. ECD: October 29, 2021.

OIG Analysis of CBP's Response: CBP's proposed action is responsive to the recommendation. We consider the recommendation open and resolved until CBP provides copies of its new quarterly oversight procedures for case file review.

CBP Comments to Recommendation #4: CBP concurred with our recommendation. CBP OFO will analyze FY 2013 and older case files to determine whether it should continue to hold the stored drugs as evidence or destroy them. CBP OFO will create a quarterly status report to monitor progress. ECD: July 30, 2021.

OIG Analysis of CBP's Response: CBP's proposed actions are responsive to the recommendation. We consider the recommendation open and resolved until CBP provides copies of its analysis of drugs held from FY 2013 and older, its determination of whether they are necessary as evidence, and any subsequent actions taken. Additionally, CBP should provide confirmation it implemented procedures for a quarterly status report to monitor whether drugs are necessary as evidence.

Objective, Scope, and Methodology

Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

Our objective was to determine whether CBP effectively stores seized drugs in permanent vaults. To answer our objective, we reviewed and analyzed:

- Federal laws, regulations, policies, and procedures to identify applicable criteria governing seizing, transporting, storing, and destroying drugs;
- CBP, Homeland Security Investigations, and prosecutor guidance, process workflows, and standard operating procedures related to seizing, transporting, storing, and destroying drugs;



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Department of Homeland Security

- CBP drug seizure data from FY 1984 through FY 2019;
- vault inspections from FY 2014 through FY 2018;
- vault storage reports as of April 2019 (including cases from October 1983 until April 2019); and
- CBP's *Cost of Destroying Drugs* report from FY 2017 and FY 2018.

We interviewed officials from:

- DHS;
- CBP OFO, Air and Marine Operations, and U.S. Border Patrol;
- Transportation Security Administration;
- United States Coast Guard;
- ICE;
- DEA;
- USAO; and
- Executive Office for U.S. Attorneys.

We conducted site visits at:

- U.S. Border Patrol checkpoints in [REDACTED] to observe seizure operations;
- air ports of entry at [REDACTED] to observe operations related to seized drugs;
- OFO field offices and vaults in [REDACTED] to observe drug storage operations; and
- destruction facilities in [REDACTED] to observe destruction processes.

To assess the reliability of CBP's SEACATS, we interviewed CBP Office of Information Technology officials, the system owners responsible for infrastructure and maintenance of SEACATS. Additionally, we reviewed documentation on how personnel input case file data into the system, and interviewed ICE agents and OFO case managers responsible for entering data



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into SEACATS. Using read-only access granted by CBP, we traced source documents to SEACATS and determined SEACATS data was sufficiently reliable for the purposes of this audit.

To assess the reliability of OFO's Drug Storage Location Report for determining seizure, storage, and destruction dates as well as determining location and weights of drugs, we confirmed CBP imported data directly from SEACATS into the report. Additionally, we interviewed CBP officials and observed an official generating the report and determined case data from the Drug Storage Location Report was sufficiently reliable for the purposes of this audit.

To assess whether OFO adhered to its drug storage waiver process, we randomly selected a sample of cases from OFO's Drug Storage Location Report for FY 2013 through FY 2018 to request hard copy case files and reviewed them for compliance with SAMEPH requirements.

To assess whether OFO properly managed threshold amounts and adhered to its destruction procedures, we reviewed and analyzed drug cases and weights stored from October 1983 through April 2019 according to OFO's Drug Storage Location Report. We also obtained and reviewed relevant guidance and interviewed OFO, ICE, and DOJ officials. We reviewed case files for completeness including source documents as required by guidance, and compiled and analyzed the data for trends.

We conducted this performance audit between June 2018 and October 2020, under the authority of the *Inspector General Act of 1978, as amended*, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective.

The Office of Audits major contributors to this report are Sean Pettersen, Director; Christine Haynes, Director; Melissa Powe Williams, Audit Manager; Alphonso Hines, Auditor-in-Charge; Lori Smith, Auditor; J. Farias, Program Analyst; Lauren Moore, Independent Reference Reviewer; Thomas Hamlin, Communications Analyst; and Kenneth Kaplan, Counsel.



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Appendix A
CBP Official Comments

1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

January 4, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Henry A. Moak, Jr.
Senior Component Accountable Official
U.S. Customs and Border Protection

1/4/2021

X 

SUBJECT: Management Response to Draft Report: “CBP Needs
Additional Oversight to Manage Storage of Illicit Drugs”
(Project No. 18-101-AUD-DHS(a))

Thank you for the opportunity to comment on this draft report. The U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

Using a multicomponent approach, the U.S. Department of Homeland Security (DHS) leads the Nation’s illicit drug interdiction efforts, including preventing the illegal importation of dangerous substances. As part of these efforts, CBP annually seizes hundreds of thousands of pounds of illegal drugs attempting to enter the United States, and is responsible for storing seized narcotics in one of its 62 permanent seizure vaults, as well as destroying illicit drugs seized by DHS law enforcement pending the prosecution and sentencing of violators by the U.S. Department of Justice.

In support of CBP’s storage and destruction of dangerous substances under its counter-narcotics mission, the CBP Office of Field Operations (OFO) ensures the continuous destruction of excess narcotics in a timely manner to reduce the amount of narcotics in CBP vaults. The destruction process: (1) reduces storage costs; (2) decreases the labor necessary for inventory and manipulation; and (3) partially mitigates the risk of theft or injury. The OIG’s draft report, however, does not sufficiently recognize the factors and challenges CBP must consider when “over the threshold” amounts are not destroyed, such as: (1) budget constraints; (2) destruction facilities schedule/operations; (3) staffing shortages; (4) lack of responses to CBP’s request for authorization to destroy; and/or (5) provide pertinent documentation for case files.



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CBP is also concerned that the OIG's draft report contains inaccuracies and misleading representations of CBP's processes regarding the storage and destruction of seized narcotics. In its draft report, the OIG stated that "CBP did not effectively store and destroy seized illicit drugs in its permanent seizure vaults," however, the OIG did not provide any specific instances or case numbers so that CBP could verify the OIG's findings, or address the issues identified and ensure immediate corrective action. In addition, the OIG did not definitively say whether a waiver was required for the "86 percent of illegal drugs that CBP stored in its vaults were greater than allowed quantities." The draft report omits the fact that not all Schedule III, IV, and V controlled substance seizures require a waiver, which would negate them from the 86 percent calculation. Additionally, the draft report does not specify whether waivers for destruction were granted in all of the cases reviewed due to the Assistant U.S. Attorney requesting the bulk and/or sample to be held, nor does the report specify whether a portion of the waivers were granted because a destruction facility was not available. Finally, the OIG did not provide a rationalization for its statement that CBP "potentially incurred additional financial burdens to store, secure, inventory, manage, and process the excess drugs."

The OIG draft report also states that CBP coordinates with U.S. Immigration and Customs Enforcement/Homeland Security Investigations (ICE/HSI) to process and manage the drug seizure evidence, and while ICE/HSI investigates drug smuggling and trafficking activities, CBP stores and manages the seized drugs. The report goes on to say, ICE/HSI then coordinates with the U.S. Attorney's Office (USAO) to determine whether it will prosecute a case. If the USAO elects to prosecute the case, ICE/HSI should submit the threshold amount to a Drug Enforcement Administration (DEA) laboratory for analysis. However, a more accurate depiction of this process would be to state that ICE/HSI should submit the threshold amount to the DEA laboratory for analysis, and that CBP will destroy the bulk narcotics. In addition, should the USAO decline prosecution, ICE/HSI may contact state and/or local authorities to determine if they will agree to prosecute. If a state or local authority accepts the case, the entire narcotics seizure will be turned over to that agency. If state and/or local authorities do not accept the case, CBP maintains custody of the narcotic seizure for storage and disposition.

It is also important to note that OIG's draft report contains inaccurate information regarding DEA laboratories' interactions with CBP. For example, CBP does not ship to, nor does CBP directly receive samples from any DEA laboratory. In fact, CBP does not have contact with DEA laboratories. ICE HSI turns over the samples to the DEA laboratory for testing, as outlined in the "Seized Asset Management and Enforcement Procedures Handbook," HB 4400-01B, dated July 2011, a copy of which was provided to the OIG during the course of this review. CBP does not dictate nor provide instruction to the DEA laboratory on how samples and bulk drugs are to be packaged. In order to



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Department of Homeland Security

maintain the integrity of the sealed DEA package, once packaged by the DEA laboratory, the drug packaging is not reopened or re-bagged by CBP.

The OIG's draft report also asserts that CBP was "stockpiling" narcotics, which is an inaccurate and unmerited allegation. An accurate description is that, in some instances, CBP did not destroy narcotics found to exceed threshold amounts needed as evidence, which is inconsistent with CBP's internal policies.

CBP is further dismayed that the OIG's draft report is not a balanced report. For example, in its report the OIG restates a finding from its Management Alert OIG-19-53, "CBP Did Not Adequately Protect Employees from Possible Fentanyl Exposure," dated July 16, 2019. However, the OIG failed to report that CBP took immediate remedial action to address the Management Alert, and that the swift action resulted in the OIG agreeing to close its related recommendation in July 2020. Additionally, end users of the report would have a more complete perspective of seizures stored in CBP's permanent vaults between Fiscal Years 2014 and 2019, if the report contained a graphic or statement to show the total amount of narcotics destroyed during the timeframe reviewed.

The draft report contained four recommendations, with which CBP concurs. Attached, find our detailed response to each recommendation. CBP previously submitted technical comments addressing several accuracy and contextual issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



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**Attachment: Management Response to Recommendations
Contained in 18-101-AUD-DHS (a)**

OIG recommended that the CBP Executive Assistant Commissioner, Office of Field Operations (OFO):

Recommendation 1: Ensure that requests to store drug amounts exceeding established thresholds are automatically denied and that an AAG [Assistant Attorney General] appeal letter accompany any waiver requests.

Response: Concur. OFO will issue a memorandum to the Field Offices to ensure that an AAG appeal letter will accompany any waiver request. The AUSA appeal letter will be uploaded into SEACATS. Estimated Completion Date (ECD): April 30, 2021

Recommendation 2: Collaborate with drug seizing agents and testing laboratories to create an interagency agreement specifying that laboratories will return the threshold amount and the bulk drugs packaged separately so that CBP can destroy the bulk, or excess amount.

Response: Concur. CBP OFO will pursue an interagency agreement to have the Drug Enforcement Administration laboratories return the threshold amount and bulk drugs packaged separately. This will aid the process of destroying bulk seizures and maintain the threshold sample as evidence. ECD: June 30, 2021.

Recommendation 3: Develop additional controls to ensure case files are complete and contain all the required documentation to store excess drugs.

Response: Concur. CBP has existing policies that require case files to be complete and contain all required documentation to store excess drugs. However, CBP acknowledges deficiencies in not having all the documents in the case files. CBP OFO will implement new procedures for quarterly oversight review of seizure case files to ensure that all documents are in the case file. ECD: October 29, 2021.

Recommendation 4: Analyze paper case files from FY [fiscal year] 2013 and older to determine whether all the stored drugs are necessary as evidence and destroy excess quantities.

Response: Concur. OFO will analyze case files from FY 2013 and older to determine whether the stored drugs should continue to be held as evidence, or authorized for destruction. OFO will create a status report quarterly to monitor progress. ECD: July 30, 2021.



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Appendix B Drug Storage Threshold Limits

Drug Type	Threshold Limits
Cocaine	10 kilograms
Fentanyl	800 grams
Liquid Fentanyl	800 grams
Liquid Heroin	2 kilograms
Hashish	20 kilograms
Heroin	2 kilograms
Khat	4.54 kilograms
Marijuana*	1 kilogram
Methamphetamine	2 kilograms
Liquid Methamphetamine	2 kilograms
ODB	2,000 tablets
PCP	2 kilograms
Steroids	2 kilograms
Thai Stick	2 kilograms
Other	2 kilograms

* Federal regulation grants an exception for marijuana exceeding 10 kilograms.
Source: SAMEPH 4.1.18 and 28 C.F.R. § 50.21



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