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Research in Brief

Michael J. Russell, Acting Director

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Preventing Illegal Diversion of Chemicals: A Model Statute

by Sherry Green

Law enforcement agencies around the world are using a variety of methods to attack the illegal and deadly "industry" of illicit drugs. Enforcement officials seize contraband substances, break up distribution networks, disrupt money-laundering operations, and destroy crops. A critical part of this multifaceted attack on drug trafficking is the control of specific chemicals that are necessary to produce illegal drugs.

The United States is one of the world's leading producers and distributors of the chemicals that are used to make controlled substances. Each year our Nation exports more than 50,000 metric tons of chemicals to Latin America, many of which find their way into the clandestine laboratories of cocaine- and heroin-producing countries. In fact, seizures of illegal labs in Colombia and other Latin American countries often uncover chemical containers with U.S. company logos. Until 1989 much of the

cocaine entering our country was produced using chemicals originating in the United States.

Although there has been a decline in the export of chemicals for manufacturing illegal drugs, there has been an increase in the chemicals' distribution at home. Illegal domestic laboratories are now capable of producing enough illicit drugs to satisfy U.S. consumers' demand.

In 1991 the National Institute of Justice (NIJ) supported a project to help the States develop a legislative response to the problem of distribution of chemicals and their manufacture into illegal drugs. To prepare the Model State Chemical Control Act of 1992 (the Model), the American Prosecutors Research Institute (APRI), the research arm of the National District Attorneys Association, brought together investigators and prosecutors from Arizona, California, Oklahoma, Texas, and

Washington State. In addition, APRI solicited comments from the Department of Justice and the Drug Enforcement Administration (DEA) on the lessons they had learned at the Federal level and sought to understand the concerns of the chemical and pharmaceutical industries.

This Research in Brief describes how chemicals are used to make illicit drugs, discusses existing Federal and State legislation to curtail the diversion of chemicals for illicit drug production, and reviews the Model statute.

Domestic illicit drug production

Essential and precursor chemicals. All major illicit drugs except marijuana are either extracted or synthesized in a process requiring chemicals that are categorized as either "essential" or "precursor." Essential

Chemicals diverted from legitimate commerce are used in the production of illicit drugs such as cocaine, heroin, methamphetamine, PCP, and LSD. Controlling illegal diversion and use of such chemicals is essential to limiting illicit drug production. Recent efforts to address this problem are based on the belief that illicit drug production can be traced from the records of chemical manufacturers and dealers of raw materials in the same way that laundered money can be traced through financial records.

The principal U.S. statute to control chemical diversion is the Chemical Diversion and Trafficking Act of 1988, which established recordkeeping requirements and enforcement activities, initially for 20 chemicals.

The Act has already proven effective in limiting the international illicit diversion of the identified chemicals and controlling some domestic manufacturing. However, illicit drug production in the United States has been rising at an alarming rate, with illegal domestic laboratories now capable of producing enough stimulants, depressants, hallucinogens, and narcotics to satisfy demand for these substances.

Adequate recordkeeping ensures that there are paper trails on chemicals sent to illegal laboratories that make drugs. Thirty-two States, however, do not require recordkeeping of transactions involving chemicals identified as necessary for producing illegal drugs. Criminals camouflage diversion of chemicals by moving shipments through States without recordkeeping requirements.

To focus attention on the need for all State law enforcement agencies to supplement Federal controls over chemical traffic and its diversion into illicit drug manufacturing, the National Institute of Justice sponsored a project to create a Model State Chemical Control Act. The Model Act seeks to balance and accommodate the interests of law enforcement and legitimate commerce. This Research in Brief explains how the Model Act can be used to help halt the growth of illegal domestic drug manufacturing by stopping the diversion of chemicals from legitimate to illegitimate purposes.

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chemicals are used to extract drugs, such as cocaine, from plants. Although these chemicals do not become part of the drug's molecular structure, they are crucial to the manufacturing process. Precursor chemicals are used to synthesize drugs (such as PCP), which are not naturally derived. These chemicals do become part of the drug's molecular structure.

Clandestine laboratories. Highly sophisticated laboratory operations are sometimes necessary to manufacture drugs. For example, producing marketable quantities of cocaine requires large-scale operations to handle the enormous amounts of coca leaves and solvents required. On the other hand, illegal drug production is often a simple process, without need of complex technology, sophisticated education, or training. Many synthetic drugs such as methamphetamine and PCP can be produced in someone's home with readily available laboratory equipment. In fact, with equipment and precursor chemicals worth \$200, a criminal can in 18 hours produce a batch of methamphetamine with a street value of \$98,000.¹

In the 1980's States faced an outbreak of clandestine laboratories because chemicals were readily available on the open market or were easily diverted from legitimate commerce. In 1986 the Oklahoma Bureau of Narcotics (OBN) seized 28 labs, an almost 100-percent increase over the 16 labs seized in 1985. Another 100-percent increase in seizures occurred in 1988 when OBN seized 62 laboratories, compared to the 30 labs seized the previous year. From 1985 to 1987, Texas narcotics officers seized more than twice the number of labs as OBN.

Clandestine Labs

Clandestine laboratories range from small crude operations in sheds, bathtubs, mobile homes, boats, and motel rooms to highly sophisticated operations with professional quality laboratory glassware and equipment.

More than 80 percent of the clandestine labs in the United States produce methamphetamines.² With a knowledge of chemistry equivalent to that learned in high school, illicit lab operators are believed to produce 25 tons of methamphetamines annually with a street value of \$3 billion. Less than 1 percent of that amount is spent on the chemicals needed for production.³

Chemical Diversion and Trafficking Act

In 1988 Congress enacted the Chemical Diversion and Trafficking Act (CDTA), Subtitle A of the Anti-Drug Abuse Amendments of 1988 (codified as amendments to the Federal Controlled Substances Act). CDTA established recordkeeping and reporting requirements and authorized enforcement activities for domestic and international transactions in designated precursor and essential chemicals. Originally CDTA regulated machines for making the drugs into tablets or capsules, 12 precursor chemicals, and 8 essential chemicals. Now, 27 precursor and 7 essential chemicals are on the CDTA list. Chemicals may be added or deleted under standard Federal rulemaking procedures.

CDTA applies to any individual or legal entity that manufactures, distributes domestically, imports, or exports any of the listed chemicals. The Act makes the unauthorized trade in these listed chemicals equivalent to trafficking in illegal drugs.

Each chemical has been assigned a threshold amount, by volume or weight, or a threshold number of monthly transactions. Once the threshold has been reached or exceeded, regulated individuals and entities must comply with Federal recordkeeping, reporting, and identification requirements. However, threshold quantities do not apply to machinery; distribution of a single tableting or encapsulating machine triggers CDTA provisions.

Among the provisions are requirements that purchasers supply proof of identity in all regulated transactions. The type of identification required depends on whether the customer is new, is an individual or established business, is paying in cash, or is exporting the chemical to another country.

Records of regulated domestic transactions involving a precursor chemical or a tableting or encapsulating machine must be kept for 4 years. For an essential chemical, the record must be kept 2 years. Records must be readily retrievable either at the business where the transaction occurred or some other central location. Each record must contain specific information about the transaction and is subject to inspection and photocopying by the Drug Enforcement Administration.

CDTA requires that regulated individuals and entities report some circumstances both orally and in writing to DEA. These

Closing the Door

The Office of National Drug Control Policy has estimated that the world supply of cocaine in 1990 was 1,000 metric tons, or about 2.2 million pounds. To produce this amount of cocaine, millions of pounds of essential chemicals were required for processing. But many of these chemicals such as hydrochloric acid also have hundreds of legitimate uses, and for this reason, they are common substances in international trade.

Criminals obtain these substances from manufacturers through theft, bribery of employees, or even legal purchase, especially in areas that lack chemical control laws or do not enforce them. Poor plant security can increase theft, and some retail purchasers are actually "front companies" set up by producers to disguise the illicit drug trade.

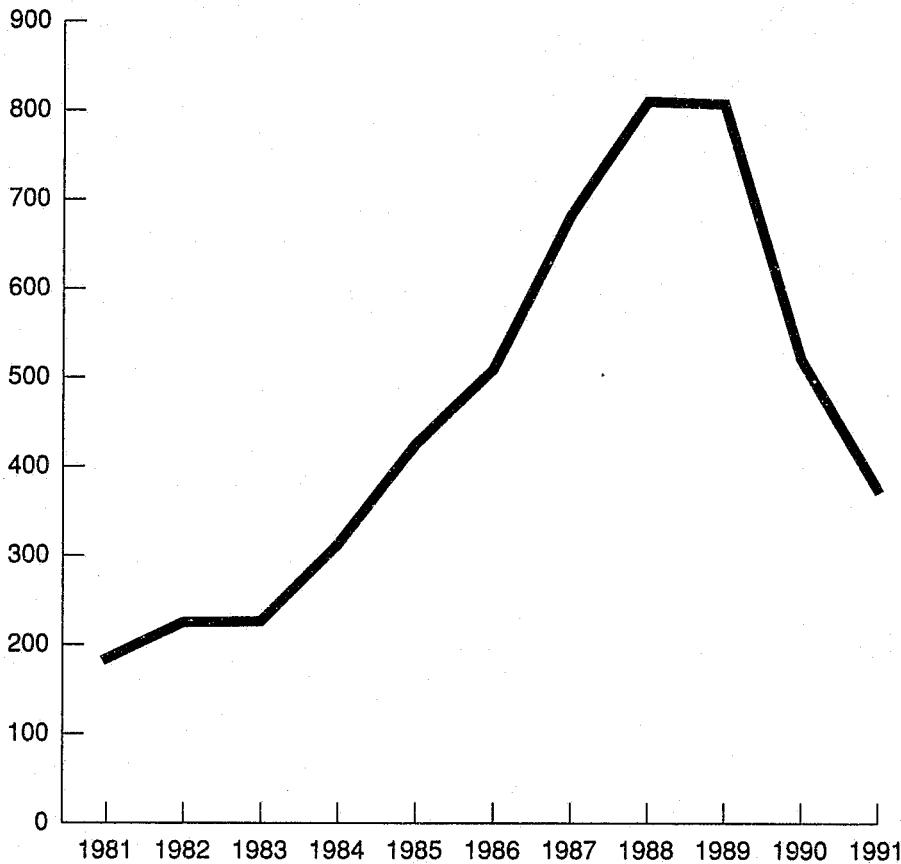
In addition, the vast international network of freight forwarders, brokers, and agents provides access to chemicals through multiple sales transactions, similar to money-laundering operations. In ports and free trade zones, criminals can obtain the desired chemicals by repacking or relabeling materials.

CDTA has greatly decreased U.S. exports of essential chemicals to Latin America. This Federal statute has added to costs borne by criminals, and the new regulation and recordkeeping requirements of the Act make it increasingly likely that illicit operations will be detected.

include uncommon methods of payment, loss or disappearance of a chemical, and suspicion that a chemical has been diverted for illegal purposes. As with records, reports must contain the date of the transaction, quantity of the chemical purchased, name and address of each party, method of transfer, and other descriptive details. On the basis of the reports or a lapse in recordkeeping, DEA has the authority to stop chemical shipments. Receipt of the required advance notice of shipments can trigger DEA suspension when an illicit transfer is suspected.

The effect of Federal control. Shortly after implementation of CDTA, DEA noted a downward trend in domestic illegal lab activity as measured by the number of lab seizures (see exhibit 1). Of the 1,000

Exhibit 1. The Number of Seized Laboratories Increased Steadily Until 1988, When Essential and Precursor Chemicals Came Under Federal Regulation



Source: Drug Enforcement Administration

projected DEA lab seizures for 1989, 807 materialized. A sharper decline occurred the following year when DEA seized 521 laboratories. This decline was the first time seizures had dropped significantly since 1981.

CDTA has also been successful in controlling exports of essential chemicals to Latin America (see "Closing the Door" on page 2). But as the pathways to foreign buyers have narrowed, some U.S. exporters have turned their attention to the domestic market. Opportunities for diversion exist all along the domestic commercial chain. Although CDTA's strict requirements help safeguard the legal transfer of chemicals above the threshold levels, illicit operators are restructuring their businesses to avoid Federal regulations. They are focusing their efforts on States that do not have effective mechanisms for controlling chemicals.

The need for effective State controls

State regulatory and enforcement efforts are needed to supplement Federal controls over the movement of chemicals into illegal channels. If State officials can follow the trail of precursor and essential chemicals from the chemical manufacturer to the illicit drug producer, then producers can be identified and apprehended before they manufacture illegal drugs. Controlling these chemicals, therefore, is a potent strategy that can help identify drug criminals and interfere with their operations.

Effective regulation of chemical transactions could dry up the sources that supply illegal labs. However, clandestine drug production is a nomadic business. When chemicals become difficult to obtain in one locale, illegal lab operators simply move their operations to a location where acqui-

sition of chemicals is less complicated. Differences in the extent of control exercised by the States currently make that a fairly easy process. More consistent State laws could curtail movement of illegal labs from State to State.

Existing variations in State controls

To date 18 States have sought to control the existence of clandestine labs by enacting their own detailed chemical tracking requirements (see exhibit 2 on next page). Some jurisdictions have incorporated these requirements into their controlled substances acts already on the books, while others have adopted new, distinct statutes.

Number of chemicals. Colorado controls the largest number of chemicals (35) while Montana regulates 9. The differences reflect each State's experience or policy regarding diversion, abuse, and the potential illicit use of a chemical. Nearly all of the States that have controls exclude prescription or over-the-counter drugs, or both, from chemical requirements, with special exemptions for ephedrine, pseudoephedrine, norpseudoephedrine, and phenylpropanolamine (see "Illegitimate Uses for Legitimate Products").

Illegitimate Uses for Legitimate Products

Many people recognize ephedrine as an ingredient in sinus medications. However, consumers are often unaware that ephedrine is also the primary precursor used to illegally produce methamphetamine (meth). In 1990, 53 percent of the clandestine meth labs seized by the Drug Enforcement Administration used the ephedrine reduction method to produce the drug.⁴

State officials report that illicit meth laboratories in the West and Southwest began using ephedrine after phenylacetic acid came under State regulation. In northern California 85 percent of the seized meth labs used single-ingredient ephedrine tablets. In Oregon officials discovered that over-the-counter ephedrine tablets sold in the Portland area had become a source of ephedrine for northwest meth lab operators.⁵

For this reason, ephedrine has been included in the list of chemicals targeted for regulation under the Model State Chemical Control Act.

Exhibit 2. Some Provisions of State Chemical Control Statutes

	Number of Chemicals	Years Records Must Be Kept	Common Form	Required Delivery Notice (Days Before/ After Delivery)	Monthly Report Alternative	Days To Report Difference in Quantity Shipped Versus Received	Purchase Out-of-State Report	Days To Report Theft or Loss	Records for Chemical Lab Apparatus	Confidentiality of Records
Alabama	17	2	X			3		3 ^a		
Arizona	19		X	21	X	3	X	3		
Arkansas	20	2		21	X ^b	3	X	3		
California	32			21/3	X		X			
Colorado	35	2	X	21	X	3	X	3		
Hawaii	31		X	21	X		X	3		X
Iowa	12		X	21	X	7	X	7		
Louisiana	18	2	X	21	X	3	X	3		
Minnesota	31	5		21	X					
Missouri	20			21	X					X
Montana	9		X	/3	X ^b	3		3		
New Mexico	26									
Oklahoma	20				X ^c			3 ^a		
Oregon	17	2	X	3/10	X ^b	3	X	3		
Pennsylvania	32									^d
Texas	16	2	X	21	X	3	X	3	X	
Utah	31			3 ^e			X ^f	X ^g		
Washington	23		X	21	X	7	X	7		

^a Also requires 3-day notice for disposal of drug.

^b Requires both lawful record of use and supply pattern.

^c Requires only lawful record of use.

^d Penalty for wrongful use.

^e Applies only to extraordinary or unusual transaction.

^f Also applies to selling out-of-State.

^g No days specified.

Source: American Prosecutors Research Institute

Registration. All 18 States require a license or permit to lawfully manufacture or transfer a regulated chemical. Only a few regulate the purchase or possession of chemicals. Registration renewal generally happens annually and involves a reasonable fee; the definition of reasonable varies from a maximum of \$25 in Arkansas to a minimum of \$250 in New Mexico. Grounds for denial, suspension, or revocation include fraud; drug law violations and convictions; and denial, suspension, or revocation of Federal registrations.

Recordkeeping. Differences also occur in the requirements for recordkeeping. For example, several jurisdictions mandate that chemical transfer records be kept for 2 years after the transaction date, but Minnesota requires that records be kept for 5 years. Texas requires that records of sales of laboratory apparatus also be kept. Hawaii and Missouri maintain the confidentiality of information obtained through records. Pennsylvania penalizes wrongful use of the information.

Reporting. Required reporting of intrastate transfers and out-of-State purchases also varies among States. In several States the regulatory agency must be given 21-days advance notice of any chemical delivery. Some States provide a monthly reporting alternative for individuals and entities with a history of lawful use, a regular relationship with a recipient, or both. While California and Montana require notice of receipt of chemicals within 3 days after delivery, Oregon allows 10 days. Ten States require that special reports be submitted within 3 days after discovery of a theft or loss of chemicals, and eight require reports within 3 days for a discrepancy in quantities shipped and received. Iowa and Washington extend these deadlines to 7 days (see exhibit 2).

Exemptions. Medical professionals, agents, and licensed entities such as common carriers are traditionally exempt from licensing or reporting obligations. Some States expand the exemptions to include college chemistry students, government employees, or researchers.

Purchaser identification. Most jurisdictions mandate that individual purchasers identify themselves with a photograph, proof of street or residential mailing address, and signature. Some jurisdictions ask for the purchaser's birthdate, driver's license or other State-issued identification number, year in which the purchaser's vehicle was manufactured, and vehicle license tag number. Most business recipi-

ents must furnish an authorization letter listing an identification number, an address, a phone number, and a description of the chemical's intended use.

Responsibility. Finally, there is no consensus among the States on which government agency should be given regulatory responsibility. The 18 States assign this duty to a wide variety of health, pharmaceutical, commerce, and enforcement agencies.

Model State Chemical Control Act

In developing the Model State Chemical Control Act of 1992, the drafters sought to close loopholes in existing Federal and State legislation and to foster greater consistency among State regulations. Unlike most criminal laws, the Model is a preventive measure. Its goal is to stop drug offenses before they occur by preventing precursor and essential chemicals from being diverted to illegal channels. It seeks to protect the interests of legitimate commerce without limiting the ability of law enforcement to stop illicit chemical transactions.

Monitoring every transaction involving a regulated chemical. The Model creates a monitoring system that tracks 35 chemicals from source to use. It covers a comprehensive range of chemicals controlled by States and the Federal Government (see exhibit 3 next page).

The Model's reporting and recordkeeping requirements apply to every transaction involving a regulated chemical, not just those exceeding a legal threshold. Under Federal law, manufacturers and distributors do not have to report or keep records on individuals or businesses who buy chemicals in amounts below the legal threshold. Individuals can circumvent the law by making multiple purchases of small quantities, thereby accumulating large amounts of chemicals for clandestine production. Unfortunately, Federal officials have no way of obtaining information about such transactions. The Model permits State and local officials to address this type of diversion activity, which would otherwise escape detection until after illegal use of the chemicals.

The list of regulated chemicals can be modified by rule in response to changes in diversion or use. Under the Model, State officials may regulate a chemical on an emergency basis while awaiting completion of normal rulemaking procedures.

Emergency regulation is sometimes necessary to prevent imminent hazards to public health and safety. Some chemicals are flammable or toxic and their use must be controlled as soon as possible to prevent explosions, environmental damage, or illness.

Registering manufacturers and distributors. Responsibility for the control of regulated chemicals rests primarily with manufacturers and distributors. Therefore, the Model requires that they annually furnish law enforcement with detailed information about the sources, location, and amount of chemicals available for sale. The purpose of annual registration is threefold:

- To convey to manufacturers and distributors an understanding of the critical role they play in eliminating illegal chemical transfers.
- To help government officials determine if the chemicals found at clandestine lab sites have been supplied by a legal or "underground" source.
- To help government officials more accurately assess the extent of illegal diversion.

The drafters anticipate that the number of annual registrations to be processed will be manageable. For example, in California officials currently register only 40 to 45 companies per year.

Requiring permits to possess a regulated chemical. Permits identify which persons intend to use specific quantities of chemicals for a specific purpose.

With certain exceptions, every applicant for a permit must provide detailed personal information, including a criminal history and notarized fingerprint card. Based on this information, government officials ascertain the fitness of a potential chemical recipient and ensure that the intended use is lawful.

The permit provision is modeled after Oklahoma's chemical control statute, which extends the law beyond the traditional "receiving" category of purchasers to individuals who want to "possess" a regulated chemical. By requiring that they obtain a permit each time they seek to possess a regulated chemical, the Model eliminates a significant loophole in many existing statutes. For example, some illegal "cookers" manufacture controlled substances using chemicals produced in their own clandestine laboratories. They are not subject to existing regulation and liability

Exhibit 3. Chemicals Proposed for Regulation Under the Model State Chemical Control Act

Acetic anhydride
Anthranilic acid, its esters and salts
Benzaldehyde
Benzyl chloride
Benzyl cyanide
D-lysergic acid*
Diethylamine and its salts
Ephedrine, its salts, optical isomers, and salts of optical isomers
Ergonovine and its salts
Ergotamine and its salts
Ethylamine and its salts
Hydriodic acid
Isosafrole
Malonic acid and its esters
Methylamine and its salts
3, 4-methylenedioxyphenyl-2-propanone
Morpholine and its salts
N-acetylanthranilic acid, its esters and salts
N-ethylephedrine, its salts, optical isomers, and salts of optical isomers
N-ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers
N-methylephedrine, its salts, optical isomers, and salts of optical isomers
N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers
Nitroethane
Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers
1-phenyl-1-chloro-2-methylaminopropane (chloroephedrine, chlorpseudoephedrine), their salts, optical isomers, and salts of optical isomers
Phenyl-2-propanone*
Phenylacetic acid, its esters and salts
Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers
Piperidine and its salts
Piperonal
Propionic anhydride
Pseudoephedrine, its salts, optical isomers, and salts of optical isomers
Pyrrolidine and its salts
Safrole
Thionylchloride

* This chemical should be deleted if it is already scheduled under the State's controlled substances act.

provisions, which apply solely to purchasers, because they do not buy the chemical from an outside source. Under the Model statute, "cookers" would be subject to the law because although they do not "receive" the chemicals, they nonetheless "possess" them.

The Model's permit process protects legitimate commerce in two ways. First, it exempts the owners and officers of publicly held corporations (those with 35 shareholders or more) from the disclosure requirements of permit applications. These corporations are often fairly sizable businesses or are headquartered out-of-State. Their shareholders and officers lack the personal access necessary to illegally use or transfer regulated chemicals. The Model assumes that there is no need for detailed background information or fingerprint cards for such persons.

Second, the Model includes a reporting alternative for possessors who demonstrate a history of regular, legitimate use. The risk of these possessors diverting chemicals for unlawful purposes is less than with other possessors. Therefore, they may submit retrospective monthly reports of actual chemical use in lieu of obtaining permits. The Model prevents unnecessary duplication by accepting copies of Federal reports containing information about threshold amounts of regulated chemicals.

Exempting individuals from regulation.

The Model exempts common carriers, pharmacists, physicians, and other authorized practitioners from the statute's requirements. Manufacturers can obtain a special exemption to continue marketing bona fide drug products such as over-the-counter sinus and asthma medications. A special exemption is granted upon a finding by State officials that a product is manufactured and distributed in a manner that prevents its diversion. In making the finding, State officials consider the product's packaging, advertising, and actual or potential for diversion.⁶

Safeguarding possession of regulated chemicals. The Model contains a number of safeguards to prevent unauthorized or unscrupulous persons from gaining access to regulated chemicals. It specifies that the following persons are ineligible to apply for a registration or permit:

- Convicted drug offenders.
- Persons who have had a prior registration or permit application denied, suspended, or revoked.
- Minors.

Because juveniles are subject to milder penalties than adults, they frequently have been recruited to become participants in criminal activity. Therefore, making minors ineligible should preclude drug dealers from using juveniles to acquire chemicals for illegal purposes.

The Model also provides for denial, suspension, or revocation of a registration or permit. Violation of the statutory rules, falsification of a document, and similar acts are grounds for denial of authorized access to regulated chemicals.

Spotting discrepancies in the flow of chemicals. The Model establishes four information-gathering mechanisms to help State officials spot possible diversion activities.

First, the Model requires manufacturers, distributors, and possessors to report any suspicious transaction or circumstance. Cash payments, discrepancies between quantities shipped and received, and theft or loss of chemicals are all examples of suspicious circumstances.

Coping With Chemical Hazards

Seizures of clandestine labs pose special problems for law enforcement officers because many of the chemicals used in drug manufacturing are dangerous. For example, acids and solvents are corrosive and flammable, and some are highly explosive. About one-fifth of clandestine lab seizures result from reports of fires caused by chemical processes.⁷

In addition, many precursor and essential chemicals are corrosive and can cause lung and eye damage, even upon exposure to vapors emanating from the lab. Furthermore, according to a study in California, one-tenth of seized labs were boobytrapped with explosives or with disfiguring and poisonous chemical devices.⁸

For these reasons, law enforcement experts recommend that police officers in all areas of the criminal justice system be given special training in handling these substances. They note that rural police agencies are just as likely to encounter clandestine labs as urban police. Highway patrols and other agencies in jurisdictions with large railroad and other transportation hubs are likely to find such substances enroute to a clandestine location.

Second, the Model requires manufacturers, distributors, brokers, and traders to provide monthly reports detailing every transaction involving a regulated chemical. The reports allow officials to identify the true purchaser of chemicals and ascertain whether the actual chemical use is consistent with the stated intended use.

Third, the Model requires purchasers to submit information about themselves, their permit or other authorization, and their vehicles prior to receiving or distributing a regulated chemical. This provision, which incorporates California's purchaser identification requirements, also facilitates determination of the ultimate purchaser and the chemical's use.

Fourth, manufacturers and distributors are required to take inventory annually and to keep all transaction records readily accessible for 4 years.

Providing for enforcement. The Model vests State officials with the authority to identify and respond to situations of non-compliance. It authorizes limited warrantless inspections during regular business hours and allows State officials to routinely inspect inventories, storage facilities, records, papers, files, and equipment.⁹ It also grants State officials the power to subpoena witnesses and require document production. The Model provides for stiff fines and terms of imprisonment for noncompliance.

To eliminate the economic incentive for this type of criminal activity, the Model applies a State's drug forfeiture procedures to money and property used in violation of the chemical diversion statute.

Recovering expenses. As with any proactive regulatory scheme, the Model requires a continuing investment of time and money. To prevent financial strain on scarce State resources, a system of nonrefundable application fees is recommended to help offset the cost of administering the program.

In addition, the Model imposes a special civil assessment on violators of the statute to be used for cleanup of illegal laboratory sites. Seizure of clandestine laboratories often reveals significant amounts of hazardous or toxic waste and other byproducts that have been found (see "Coping With Chemical Hazards"). Under Federal law, law enforcement agencies become liable for various cleanup and transporting operations, damage to natural resources, and subsequent health risks that remain after the lab is dismantled.¹⁰

Last year Oklahoma spent approximately \$6,000 to clean up illegal labs, and for several years California has spent more than \$1 million a year for similar tasks. However, these expenses were only for removing bulk contamination. In the future site restoration through hazardous waste removal may require even larger sums of money. The civil assessment will prevent violators from escaping financial liability for the environmental damage they cause and help States address the issue of long-term hazardous waste or residual contamination.

Applying the Model

The chemical control legislation in California, Oklahoma, Texas, and Washington served as guides for creating the Model. Oklahoma and Texas officials have already noted the positive effect of their legislation on the struggle to eliminate illegal drug production. The Oklahoma Bureau of Narcotics and Texas Department of Public Safety indicate that their States' precursor laws significantly reduced the availability of chemicals throughout Oklahoma and Texas. The reduction in supply has led to a decrease in clandestine laboratory activity in both States. The Texas Department of Public Safety reports that the availability of illicit amphetamine and methamphetamine in Texas decreased about 50 percent during the 3-year period since passage of its statute.¹¹

Despite the success of these States' efforts, the lack of adequate chemical controls in many states provides illegal drug manufacturers with opportunities to expand their production of controlled substances. The toll in health, welfare, enforcement, and safety costs as well as human suffering is incalculable. The Model is designed to help State policymakers and criminal justice professionals develop legislation that will severely curtail domestic illegal drug production while protecting legitimate commercial interests.

Notes

1. Impact of Clandestine Drug Laboratories on Small Business, 1988: Hearing Before the Subcommittee on Regulation and Business Opportunities of the House of Representatives Committee on Small Business, 100th Congress, 2d Session, 1988 (Statement of David Frohnmayer, Attorney General of the State of Oregon).

2. Drug Enforcement Administration. *Guidelines for the Cleanup of Clandestine Drug Laboratories*. Washington, D.C.: U.S.

Department of Justice, Drug Enforcement Administration, 1990.

3. Laszlo, A.T. "Clandestine Drug Laboratories: Confronting a Growing National Crisis." *National Sheriff*, 41 (1989): 9-14.

4. American Prosecutors Research Institute, Highlights of the Model State Chemical Control Act. Alexandria, Virginia: American Prosecutors Research Institute, 1991: 6-7.

5. American Prosecutors Research Institute, Highlights, pp. 6-7.

6. This provision is based on draft CDTA amendments negotiated between DEA and chemical and drug manufacturers.

7. National Institute of Justice. *Controlling Chemicals Used to Make Illegal Drugs: The Chemical Action Task Force and the Domestic Chemical Action Group*. Research in Brief. Washington, D.C.: U.S. Department of Justice, January 1993: 3.

8. Laszlo, "Clandestine Drug Laboratories," 9-14.

9. This provision complies with *New York v. Burger*, 107 S. Ct. 2636 (1987).

10. These requirements result from provisions of the Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601-9657 (1982), amended by 42 U.S.C. 9601-9675 (1988)] and the Resource Conservation and Recovery Act [42 U.S.C. 6901-6992 (1988)]. Also, the Superfund Amendments and Reauthorization Act [Public Law 99-499] makes owners of contaminated property responsible for decontamination before it is sold. Thus, if a property is confiscated by a local jurisdiction, seized through asset forfeiture laws, and subsequently sold, the jurisdiction may still be responsible for cleanup.

11. Jolley, Inspector Jerrell, and Inspector Kenneth Hailey. *Chemical Precursor Legislation: Texas Reduces the General Availability of Illicit Amphetamine and Methamphetamine*. Unpublished report, March 1991.

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Findings and conclusions of the research reported here are those of the author and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

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Sherry Green was a senior attorney at the American Prosecutors Research Institute in Alexandria, Virginia, when she worked on this project to develop the Model (supported by NIJ grant #91-IJ-CX-K002). She currently serves as Executive Director of the President's Commission on Model State Drug Laws, which is reviewing the Model for possible inclusion in its report to the States on recommended model laws.

Drafters of the Model in addition to Ms. Green were Steve Brookman, Oklahoma State Bureau of Investigation; Mark Faull, Crime Strike, Phoenix, Arizona; William Holman, San Diego District Attorney's Office; John Duncan, Oklahoma Bureau of Narcotics Enforcement; Katina Kypridakes, California Bureau of Narcotics Enforcement; Harry Matz, U.S. Department of Justice; Michael Scott, Texas Department of Public Safety; Richard Wintory, Oklahoma County District Attorney's Office; and Ken Ronald, Drug Enforcement Administration. Katina Kypridakes and Mark Faull assisted with the development of this Research in Brief.

Readers who wish to learn more about how States can address the chemical diversion issue may request a special information package that includes a copy of the Model and accompanying commentary; sample State statutes, regulations, and forms; and a chart of State chemical control requirements. Interested persons should write the American Prosecutors Research Institute, National Drug Prosecution Center, 99 Canal Center Plaza, Suite 510, Alexandria, VA 22314, or call 703-549-6790.

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