

Despite this amendment, to date DEA's chemical control activities have continued to be supported by appropriated funds and not by the DDCFA.

In its December 1996 **Federal Register** notice, DEA further excluded from fee-funding those activities that incidentally support the DCP but are funded elsewhere in the DEA Salaries Budget (and thus not fee-funded). Specific examples listed in the notice include "support provided by the Attorneys in DEA's office of Chief Counsel Division Regulatory Section; certain laboratory service support; DEA Automated Data Processing Systems support (except ARCOS and CSA); Office of Training staff; DEA Management and Administrative Support; Office of Congressional and Public Affairs; Intelligence Support and Diversion Investigators assigned overseas." 61 FR 68631.

In summary, to date fee-fundable DCP activities have included: scheduling, registration, investigation, inspection, data collection and analysis, training, establishing production quotas, cooperative efforts with state, local and other federal agencies, cooperative efforts with the regulated industry, international activities relating to the registration and control of the manufacture, distribution and dispensing of controlled substances, and attendant management, personnel, administrative and clerical oversight for the DCP because they too relate to the fee-funding criteria of 21 U.S.C. 821 and 958(f). Fee-fundable activities also have included travel, rent, utilities, supplies, equipment and services associated with the above-listed activities. Fee-fundable activities also have included activities related to the control of licit controlled substances in the United States in which the initial source is foreign. For example, smuggling a controlled substance into or introducing it into the United States is importation, albeit illegal, and constitutes an activity for which DEA registration and controls are required under the CSA and its implementing regulations; therefore activities to prevent smuggling fall under the purview of the DCP. Foreign-source substances potentially threaten the integrity of the closed system of distribution and undermine other diversion control efforts by DEA. They also may pose a public health threat and/or unlawful competition to legal, registered U.S. manufacturers and suppliers. The advance of the Internet in particular has made foreign-source substances more accessible in the United States and the diversion of these substances a greater problem. The DCP

now will address the activities that will be funded by the DDCFA as part of its programmatic responsibilities.

A more detailed description of the activities funded through the DDCFA is included in DEA's 1996 final rule (61 FR 68631) and amended final rule published on August 9, 2002 (67 FR 51988).

Current Fee-Funding

Since the last published rule in 1993, the Budget Authority for the Diversion Control Program has doubled without any associated increase in registrant fees. Currently, the fees established in 1993 are no longer adequate to recover the "full costs" of operating the DCP as required by law.

The Congressional appropriation for the DCP for Fiscal Year 1994 was \$57.1 million. For Fiscal Year 2004, the expected Budget Authority will be \$118,561,000 (this figure does not include the mandatory \$15 million transfer to the U.S. Treasury). The growth in the DCP has been driven by a number of factors some of which have been reflected in DEA budget submissions such as the creation of Tactical Diversion Squads in Fiscal Year 1997. Other DCP expansions include DEA's response to the diversion of OxyContin®, involving the opening of 247 cases from October 1999 through March 2002 (including 159 cases in Fiscal Year 2001 alone, a 270 percent increase from Fiscal Year 2000). These cases have led to a total of 328 arrests. DEA is also expending increasing time and resources on implementing its initial response to internet-based drug diversion, for which it has opened a number of cases leading to arrests and convictions. DEA has also seen an increase in the number of drug diversion cases leading to arrests. (The number of diversion arrests more than doubled in just five years, from 444 arrests in Fiscal Year 1995 to 941 diversion arrests relating to drug cases alone in Fiscal Year 2000. DEA made 871 diversion arrests relating to drug cases in Fiscal Year 2001, and 341 arrests in the first six months of Fiscal Year 2002. The slight decrease in arrests in Fiscal Year 2001 and the first half of Fiscal Year 2002 is attributable to a greater emphasis on chemical investigative activities.) These additional programmatic needs and responsibilities have required additional investigators, headquarters staff and increased financial resources to support these staff and their efforts to prevent the diversion of licit controlled substances.

The following table shows the annual growth in Budget Authority for the DCP

from Fiscal Year 1994 through Fiscal Year 2006 (expected Budget Authority for FY03 and estimated Budget Authority for FY04, FY05, and FY06). The Budget Authority is based on the President's Budget Request. Note, these figures do not include the required annual \$15 million transfer to the U.S. Treasury.

Fiscal year	Budget authority (In millions)
FY94	\$57.1
FY95	58.4
FY96	62.2
FY97	67.8
FY98	73.2
FY99	76.7
FY00	80.3
FY01	83.5
FY02	86.2
FY03 (est)	89
FY04 (est.)	118.6
FY05 (est.)	142.3
FY06 (est.)	145.3

In reviewing the activities currently supported by the DDCFA and the relevant legislation and regulatory actions governing the DCP and fee funding, DEA identified several elements of DEA operations that, though not part of the DCP, incidentally support the activities of the DCP and which to date have been funded through Congressional appropriations rather than through the DDCFA. Examples of such elements include two sections within the Office of Chief Counsel that (a) litigate administrative actions related to DEA registrants and (b) provide legal support on regulatory policy matters; a section within the Office of Training that is specifically dedicated to the DCP; a portion of the Office of Forensic Sciences Special Testing Laboratory that supports authentic sample analyses for licit drugs; and a portion of the budget for DEA's agency-wide computer network, "Firebird", related to the work of the DCP. As was discussed more fully in previous rulemakings regarding the DDCFA, while these elements incidentally support diversion control efforts, because their overall function is not primarily devoted to diversion control, they have been included elsewhere in the DEA budget and not as part of fee-fundable activities. In the absence of specific guidance in the 1993 Appropriations Act as to which activities were encompassed within the DCP and thus fee-fundable, DEA has followed the plain language of the act and used the budget categories that had historically been included in the DCP budget request of the Attorney General. As described in DEA's 1996 **Federal Register** notice, for the purposes of