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BORDER SECURITY

CBP Has Taken Actions to Help Ensure Timely and Accurate Field Testing of Suspected Illicit Drugs

GAO@100 Highlights

Highlights of [GAO-21-286](#), a report to the Chairwoman, Caucus on International Narcotics Control, U.S. Senate

Why GAO Did This Study

Within the Department of Homeland Security, CBP reported seizing approximately 830,000 pounds of drugs in fiscal year 2020. When CBP officers and agents encounter suspected illicit drugs, they conduct a presumptive field test. A positive test result is one factor CBP uses to establish probable cause for an arrest or seizure. GAO was asked to review issues related to CBP's field drug testing.

This report examines (1) CBP's policies and procedures for testing suspected illicit drugs in the field; (2) available data on CBP's field drug testing; and (3) CBP's efforts to help ensure timely and accurate test results.

GAO analyzed CBP data on presumptive field testing and laboratory confirmation of results from fiscal year 2015 through 2020; reviewed related policies and procedures; and interviewed CBP officials in five states at land, air, and sea ports of entry, Border Patrol stations and checkpoints, and CBP labs. GAO selected these locations to include varying levels of drug seizures, among other factors.

View [GAO-21-286](#). For more information, contact Rebecca Gambler at (202) 512-8777 or gambler@gao.gov.

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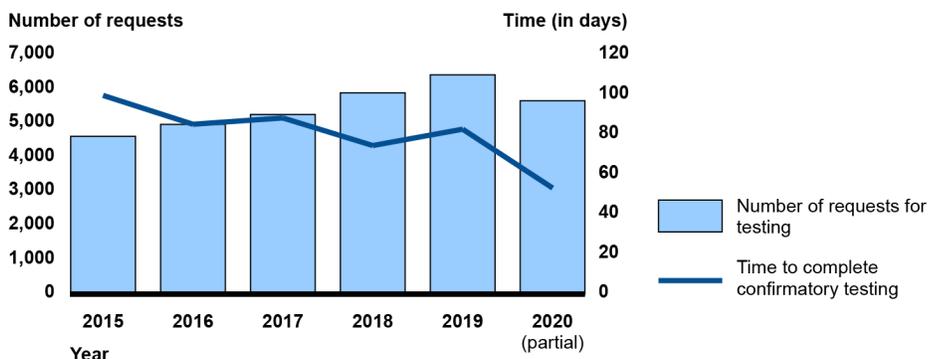
CBP Has Taken Actions to Help Ensure Timely and Accurate Field Testing of Suspected Illicit Drugs

What GAO Found

U.S. Customs and Border Protection (CBP) has policies and procedures for its officers and agents to test substances that they suspect are illicit drugs—referred to as a presumptive field test. Field officials that GAO spoke with said these policies and procedures provide sufficient guidance for conducting presumptive field testing. The policies and procedures address various topics, such as approved and recommended types of test equipment, use of the equipment, training, and requirements for documenting illicit drug seizures. They also address laboratory confirmation of field test results (confirmatory testing), which U.S. Attorney's Offices require for federal prosecution.

GAO found that CBP's Office of Field Operations and U.S. Border Patrol conducted at least 90,000 presumptive field tests associated with an arrest from fiscal year 2015 through 2020. The average time for CBP to complete confirmatory testing across its labs decreased from 100 days in calendar year 2015 to 53 days in calendar year 2020, as of September 2020. This occurred while the total number of requests for confirmatory testing increased from about 4,600 in calendar year 2015 to about 5,600 in calendar year 2020, as of September 2020. With regard to accuracy, CBP officials have taken initial steps to upgrade the software system used to document confirmatory test results. This should provide CBP with information on the extent to which presumptive field test results align with confirmatory test results.

Average Time to Complete Confirmatory Testing and Number of Requests for Confirmatory Testing Processed Across all U.S. Customs and Border Protection (CBP) Laboratories, Calendar Year 2015 through September 24, 2020



Source: GAO analysis of CBP data. | GAO-21-286

CBP has taken a number of actions to help ensure timely and accurate field drug testing, including:

- Identifying, testing, and deploying test equipment. For example, CBP tested multiple types of chemical screening devices to determine their performance and capabilities to detect fentanyl at low purity levels.
- Enhancing presumptive and confirmatory field testing capabilities by building permanent onsite labs and deploying mobile labs in certain field locations.
- Providing round-the-clock access to chemists who help interpret presumptive field test results.

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Abbreviations

Border Patrol	U.S. Border Patrol
CBP	U.S. Customs and Border Protection
DEA	U.S. Drug Enforcement Administration
DHS	U.S. Department of Homeland Security
DOJ	U.S. Department of Justice
ICE	U.S. Immigration and Customs Enforcement
LSS	Laboratories and Scientific Services
OFO	Office of Field Operations

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April 26, 2021

The Honorable Dianne Feinstein
Chairwoman
Caucus on International Narcotics Control
United States Senate

Dear Madam Chairwoman:

Within the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) seized approximately 830,000 pounds of drugs in fiscal year 2020, according to agency data. When CBP officers and agents encounter suspected illicit drugs, they conduct a test to obtain a preliminary indication of the presence of illicit drugs—referred to as a presumptive field test. CBP officers and agents use various devices to conduct presumptive field tests, including color-changing test kits and handheld electronic testing devices. A positive presumptive field test result is one factor CBP uses to establish probable cause for an arrest or seizure.

Policy makers and other stakeholders have raised concerns about the accuracy of presumptive field testing, as well as the length of time it takes for laboratories to confirm the results. For example, a 2018 study noted that although color-changing presumptive tests have provided value to law enforcement agencies for decades, these tests have limitations, including their ability to identify new and emerging drug types.¹

In 2019, the DHS Office of Inspector General reported that CBP began deploying handheld electronic presumptive field testing devices to ports of entry in 2016.² However, CBP had not conducted comprehensive testing of these devices on substances with low purity levels, and most of the fentanyl seizures at ports of entry along the southwest border consisted of

¹Department of Justice, National Institute of Justice, *Landscape Study of Field Portable Devices for Presumptive Drug Testing* (May 2018).

²Ports of entry are facilities that provide for the controlled entry into or departure from the United States. Specifically, a port of entry is any officially designated location (seaport, airport, or land border location) where CBP officers or employees are assigned to clear passengers and merchandise, collect duties, and enforce customs laws, and where CBP officers inspect persons entering or applying for admission into, or departing the United States pursuant to U.S. immigration and travel controls.

low purity substances.³ The Office of Inspector General recommended that CBP analyze the ability of presumptive testing devices to detect fentanyl in low purity levels in field environments. In July 2020, CBP published a study that evaluated the ability of four chemical screening devices to detect fentanyl at low purity levels, and the Office of Inspector General closed the recommendation as implemented.

In 2018, we reported that a surge in the interdiction of illegal drugs, including synthetic opioids, had led to backlogs at CBP laboratories responsible for confirming the results of presumptive field tests.⁴ We recommended that CBP, among other things, take a risk-based approach to allocating its laboratory resources. CBP implemented our recommendation by sponsoring a study in June 2020 that assessed its allocation of laboratory resources and taking other actions.

You asked us to review issues related to CBP's field drug testing. This report examines: (1) CBP's policies and procedures for testing suspected illicit drugs in the field; (2) available data on CBP's field drug testing; and (3) CBP's efforts to help ensure timely and accurate test results.

To address all three objectives, we interviewed CBP officials in headquarters, including the Office of Field Operations (OFO), U.S. Border Patrol (Border Patrol), and CBP Laboratories and Scientific Services (LSS). In addition, we interviewed OFO and Border Patrol officials in 16 selected field locations in Arizona, California, Florida, New York, and Texas.⁵ These selected field locations included land, air, and sea ports of entry, and Border Patrol stations and checkpoints.⁶ We selected these

³Fentanyl may be mixed and packaged with other substances, thereby lowering the purity level. The Office of Inspector General defined low purity as 10 percent or less. See DHS Office of the Inspector General, *Limitations of CBP OFO's Screening Device Used to Identify Fentanyl and Other Narcotics*, OIG-19-67 (Sept. 2019).

⁴GAO, *Illicit Opioids: While Greater Attention Given to Combating Synthetic Opioids, Agencies Need to Better Assess their Efforts*, [GAO-18-205](#) (Washington, D.C.: March 29, 2018).

⁵Due to the Coronavirus Disease 2019 (COVID-19) pandemic, we conducted these meetings by teleconference.

⁶Border Patrol is responsible for securing the U.S. border between ports of entry. As part of this, Border Patrol operates interior checkpoints at locations along the southwest and northern border to screen vehicles for individuals who were able to illegally cross the border undetected at or between ports of entry. For additional information about Border Patrol checkpoints, see GAO, *Border Patrol: Issues Related to Agent Deployment Strategy and Immigration Checkpoints*, [GAO-18-50](#), (Washington, D.C.: Nov. 8, 2017).

locations to include varying levels of drug seizures from fiscal years 2015 through May 2020—the most recent data available at the time of our selection—emphasizing locations with the greatest numbers of seizures.⁷ Our site selection criteria also included field locations with and without access to handheld electronic presumptive testing devices, mobile and permanent testing laboratories on-site, and Border Patrol checkpoints. In addition to these 16 field locations, we met with officials from four CBP laboratories responsible for conducting laboratory confirmation of presumptive field test results (confirmatory testing) for the OFO and Border Patrol locations we selected. While the information we obtained from these interviews at selected field locations cannot be generalized to all CBP locations, they provide a range of valuable perspectives and experiences regarding CBP’s presumptive and confirmatory testing processes.

To address our first objective, we reviewed CBP’s policies and procedures that address presumptive field testing and laboratory confirmation of results. These include, for example, policies and procedures listing specific types of test equipment to be used and how to use them. To identify these policies and procedures, we interviewed CBP officials in headquarters and the selected field locations. These officials also provided perspectives on when and how these policies and procedures were developed and updated, related training CBP provides, requirements specified in these policies and procedures, and any challenges that field officials report facing when conducting presumptive and confirmatory testing. We also interviewed headquarters and field officials from U.S. Immigration and Customs Enforcement (ICE) and the Drug Enforcement Administration (DEA) within the Department of Justice to understand their process for conducting investigations of CBP’s drug seizures.⁸ The control activities component of internal control standards—the actions management establishes to achieve objectives and respond to risks—was significant to this objective. We reviewed CBP’s control activities, including its policies and procedures that address presumptive field testing and laboratory confirmation of results.

⁷Each of these seizures was associated with a positive presumptive field drug test for an illicit drug. We excluded seizures that were not associated with the arrest of a person, thereby generally excluding seizures that occurred at mail facilities and cargo ships.

⁸Specifically, our interview with DEA included senior officials from nine DEA field divisions, and a senior official from DEA labs, among other headquarters and field officials.

To address our second objective, we analyzed data on CBP's presumptive and confirmatory testing activities from fiscal years 2015 through 2020. For presumptive testing, we analyzed data from CBP's SEACATS system, which CBP uses to track the disposition of seizures. Specifically, we analyzed the number of OFO and Border Patrol's drug seizures that were associated with a positive presumptive field test for an illicit drug and an arrest from fiscal years 2015 through 2020.⁹ We also used these data to analyze the number and types of CBP's presumptive field drug tests that were associated with a seizure and an arrest from fiscal year 2019 through fiscal year 2020.¹⁰ For confirmatory testing, we analyzed data from the Laboratory Information Network, which LSS uses to document requests for analysis and laboratory reports. Specifically, we analyzed how long it took to complete confirmatory testing for agencies that submitted requests for confirmatory testing from calendar year 2015 through September 24, 2020—the most recent data available at the time of our request.¹¹ To assess the reliability of these data, we reviewed related documentation, such as data dictionaries, interviewed knowledgeable agency officials, and reviewed the data to identify any errors or omissions. We found these data sufficiently reliable for describing general information on CBP's presumptive and confirmatory testing activities. We also interviewed LSS officials to determine the availability of data on the extent to which presumptive field test results align with confirmatory test results; we discuss these data issues later in this report.

To address our third objective, we reviewed agency documentation related to CBP's efforts to help ensure timely and accurate test results. These documents included numbers and locations of onsite and mobile field labs and LSS reports on the effectiveness of new or existing presumptive field testing equipment, among other documents. In addition,

⁹CBP officials stated that they only seize a drug if the result of the presumptive field test is positive, and in this way all seizures in CBP's system are associated with a presumptive field test. We focused on seizures that included arrests because these seizures may involve a person being detained while awaiting the results of a confirmatory test.

¹⁰Although CBP officials told us that they began collecting this data in June 2019, we found that SEACATS includes some records of presumptive tests conducted prior to June 2019. Officials said that this occurred because CBP officials can review and update prior seizure records.

¹¹This data includes but is not limited to requests for confirmatory testing of suspected drugs seized by OFO or Border Patrol because information on which agency submitted the request for testing is not required to be documented in LIN. However, CBP officials we spoke with said that about 95 percent of requests are submitted by OFO, Border Patrol, and ICE, which investigates OFO seizures.

we interviewed CBP officials in headquarters and our selected field locations to understand their efforts to ensure timely and accurate test results, and any challenges they faced in doing so. The control activities component of internal control, as well as information and communication, were significant to this objective. We reviewed CBP's control activities, including its efforts to help ensure timely and accurate test results.

We conducted this performance audit from March 2020 through April 2021 in accordance with generally accepted government auditing standards. These 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 on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Presumptive Field Testing Process

CBP officers and agents conduct presumptive field testing as part of their inspections or apprehensions in the field. Specifically, OFO inspects passengers, vehicles, and cargo at over 320 land, air, and sea ports of entry.¹² During the primary inspection, OFO officers determine compliance with U.S. law and admissibility to the United States. In some cases, OFO officers refer the traveler or goods to secondary inspection, which may include physical searches, canine sniffs, and X-ray examinations, among other things. This may occur, for example, if the officer suspects the presence of illegal drugs.¹³ OFO officers generally conduct presumptive field testing as part of the secondary inspection process. In addition, Border Patrol operates between ports of entry, including at interior checkpoints generally located from 25 to 100 miles of the border.¹⁴ Border Patrol agents generally conduct presumptive field testing at stations or checkpoints.

¹²OFO is responsible for conducting immigration and customs inspections at ports of entry to prevent the illicit entry of travelers, cargo, merchandise, and other items, while facilitating lawful trade and travel.

¹³For additional information about OFO's inspection process, see GAO, *Land Ports of Entry: CBP Should Update Policies and Enhance Analysis of Inspections*, [GAO-19-658](#), (Washington, D.C.: Aug. 6, 2019).

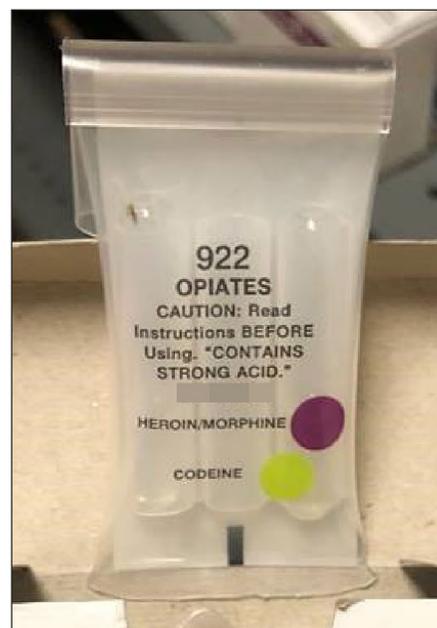
¹⁴As previously mentioned, Border Patrol operates interior checkpoints at locations along the southwest and northern border to screen vehicles for individuals who were able to illegally cross the border undetected at or between ports of entry. See [GAO-18-50](#).

During presumptive field testing, the suspected individual may be held in CBP's short-term holding facilities. For example, during secondary inspection of a vehicle, the individual could be seated on a bench, and the individual could be moved to a holding room if the result of a presumptive field test is positive. Figure 1 shows examples of presumptive field testing devices commonly used by CBP.

Figure 1: Examples of Presumptive Field Drug Testing Devices Commonly Used by U.S. Customs and Border Protection (CBP)



CBP officer using a handheld electronic testing device.



Color-changing test kit.

Source: CBP. | GAO-21-286

CBP officers and agents use several types of devices to conduct presumptive field testing, including handheld electronic devices and color-changing test kits. In 2018 the INTERDICT Act was enacted, which required CBP to increase the number of chemical screening devices available to interdict fentanyl, other synthetic opioids, and other illicit

drugs.¹⁵ In addition, the Act authorized appropriations to ensure such chemical screening devices and other resources are available during all operational hours to prevent, detect and interdict unlawful drug importation.¹⁶ As of October 2020, CBP data indicate that it has deployed 390 of its most commonly used handheld electronic devices to ports of entry and Border Patrol stations and checkpoints. Table 1 provides additional information on commonly used presumptive field testing devices.

Table 1: Descriptions and Deployment of Presumptive Field Drug Testing Devices Commonly Used by U.S. Customs and Border Protection (CBP)

Name	Description	Number and location of test devices CBP reported deploying, as of October 2020
Handheld electronic devices ^a	These devices produce a digital display of the presumptive test results for a variety of drug types.	334 deployed to ports of entry, including at least one in each field office. 56 deployed to U.S. Border Patrol stations and checkpoints, including at least one in all sectors and major checkpoints along the southern border.
Color-changing test kits	These test kits develop color in the presence of certain drugs. Different test kits are intended for different types of suspected drugs. For example, a different test kit would be used to test for heroin than for cocaine.	All ports of entry. All Border Patrol stations and checkpoints.
Fentanyl test strips	Test strips used specifically when solid or liquid fentanyl is suspected.	Over 1,400 test strips deployed to ports of entry. All major Border Patrol checkpoints.

Source: GAO analysis of CBP information. | GAO-21-286

^aWe use the phrase “handheld electronic device” to refer to CBP’s most commonly used device. Some CBP field officials we spoke with said that they also use a limited number of additional devices produced by a different manufacturer.

Confirmatory Testing Process

The results of presumptive field tests must typically be confirmed in a laboratory when federal prosecution is pursued. This process is referred to as confirmatory testing and provides a rigorous verification of the

¹⁵We use the phrase “handheld electronic device” to refer to CBP’s most commonly used handheld electronic device. Some CBP field officials we spoke with said that they also use a limited number of additional handheld electronic devices produced by a different manufacturer.

¹⁶International Narcotics Trafficking Emergency Response by Detecting Incoming Contraband with Technology (INTERDICT) Act, Pub. L. No. 115-112, §§ 3, 4, 131 Stat. 2274, 2274-75.

presence of a chemical, according to CBP, to facilitate investigation and prosecution of criminal conduct.

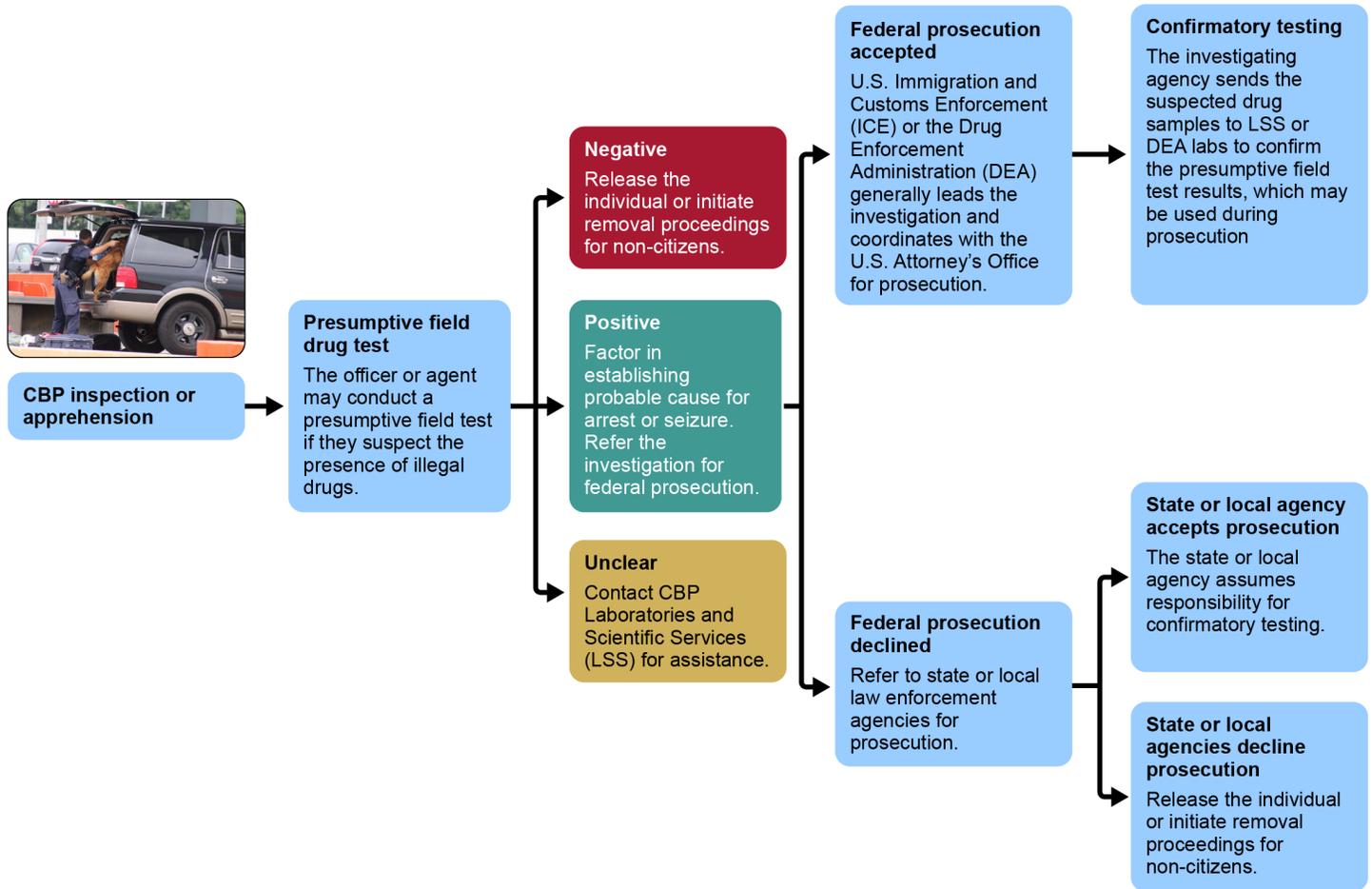
In coordination with CBP, several other agencies play a role in the confirmatory testing process. Specifically, U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations has the first opportunity to investigate OFO's drug seizures. In addition, the Drug Enforcement Administration (DEA) within the Department of Justice has the right of first refusal to investigate Border Patrol's seizures.

The investigating agency coordinates with the local U.S. Attorney's Office to determine whether to pursue federal prosecution. If federal prosecution is pursued, the investigating agency may use either CBP or DEA laboratories for confirmatory testing. LSS operates eight regional labs throughout the United States that conduct confirmatory testing; DEA operates nine main labs. If federal prosecution is declined, the investigating agency may refer the case to state or local law enforcement agencies for potential prosecution. In these cases, the state or local agency assumes responsibility for confirmatory testing.

Throughout this process, the investigating agency is responsible for the physical custody of the suspected individual—however, the individual can be detained in facilities owned and operated by other agencies, such as the Bureau of Prisons. If the individual is subject to a final order of removal, federally prosecuted, and convicted, DHS may remove the individual after the sentence is served.¹⁷ Figure 2 provides additional information on the presumptive and confirmatory testing processes.

¹⁷For additional information on the removal process, see GAO, *Criminal Alien Statistics: Information on Incarcerations, Arrests, Convictions, Costs, and Removals*, [GAO-18-433](#), (Washington, D.C.: Jul 17, 2018).

Figure 2: Process for U.S. Customs and Border Protection’s (CBP) Presumptive Field Drug Testing and Confirmation of Test Results



Source: GAO analysis of CBP information; GAO (photo). | GAO-21-286

Note: This figure presents a general overview of the presumptive field drug testing and confirmatory testing processes, although the specific circumstances may vary. For example, in some cases, presumptive field testing is conducted by officials from LSS located onsite at ports of entry.

CBP Has Policies and Procedures for Testing Suspected Illicit Drugs Identified in the Field

CBP has policies and procedures that describe the requirements for conducting field drug testing, including requirements related to confirmatory testing. In addition, CBP field officials we spoke with said that these policies and procedures provided sufficient guidance for conducting presumptive and confirmatory testing. Through our review of agency documents and interviews, we found that these policies and procedures address the following issues.

Conducting a presumptive field test. As previously described, OFO officers generally conduct presumptive field testing as part of their secondary inspection process at ports of entry, while Border Patrol agents generally conduct presumptive testing at stations or checkpoints. Both OFO and Border Patrol have policies related to inspections, during which they conduct presumptive field testing.¹⁸ CBP officials we spoke with at ports of entry and Border Patrol stations and checkpoints told us that they may conduct a presumptive field test, for example, if they identify a concealed package in a vehicle or on a person, or if a canine alerts on a vehicle.¹⁹

CBP's policies and procedures also describe various requirements for how officers and agents are to conduct presumptive field testing, including:

- CBP policies list approved and recommended types of presumptive field test devices. For example, CBP policy identifies the specific product names of color-changing test kits that CBP officers and agents are to use, based on CBP's assessment that these are the most reliable. In addition, a CBP training manual for presumptive field testing recommends that, when the presence of fentanyl is suspected, officers and agents should use fentanyl test strips prior to using other color-changing test kits.²⁰
- CBP procedures describe how to use specific types of presumptive field test equipment. For example, CBP issued standard operating

¹⁸For example, CBP's *Personal Search Handbook* (2004) sets forth policy on when intrusive searches of a person are appropriate, and the procedures officers must follow in carrying them out.

¹⁹CBP has canines that can detect concealed humans, narcotics, currency, firearms, and agriculture products.

²⁰Fentanyl test strips indicate test results through changes in color, but these test strips use a different technology than other color-changing test kits. Fentanyl test strips are specifically intended for use when fentanyl is suspected.

procedures in 2016 for conducting presumptive field testing using handheld electronic devices, and CBP updated these procedures in May 2019. These procedures describe how to ensure the device is working properly prior to testing, interpretation of test results, documenting the test results in the appropriate CBP data systems, and procedures for contacting LSS with questions about the test results.

- CBP procedures describe requirements for ensuring officer safety and handling of potentially hazardous substances, including suspected illicit drugs. For example, the standard operating procedures for handheld electronic devices state that officers and agents are to use approved personal protective equipment, such as gloves, masks, and safety glasses to obtain and test suspected illicit drugs. In addition, when available, testing should be conducted in a designated workspace or controlled environment, such as a fume hood or glove box.²¹ Further, some CBP field officials we spoke with have additional procedures to help ensure safety at their facilities. For example, officials we met with at one port of entry have guidance on how to use the glove boxes at three specific locations within the port.
- CBP policy requires the seizing officer to ensure that a precise count or weight of the seized drug is witnessed.²² In addition, some of the CBP field officials we spoke with said that, as a best practice, they require a second person to observe the presumptive testing process.

Training requirements. Prospective OFO officers receive training at their basic law enforcement academy on how to use color-changing test kits. In addition, new OFO officers and Border Patrol agents receive post-academy training at their first duty station related to presumptive field testing.²³ CBP also requires officers and agents to receive additional

²¹A fume hood is a ventilated enclosure in which gases, vapors, and fumes are contained. A glove box is a sealed container used to manipulate materials and protect workers from hazardous materials. We previously reported that, given the exceptional potency of synthetic opioids, law enforcement and public health officials have become increasingly concerned about the risks from potential exposures, such as breathing in minute quantities of synthetic opioids while responding to medical calls, crime scenes, or during drug raids. See [GAO-18-205](#).

²²CBP, *Seized Asset Management and Enforcement Procedures Handbook* (2011).

²³Border Patrol officials told us that the Border Patrol academy revised its curriculum in 2017, and that it no longer includes training on presumptive field testing. However, Border Patrol agents we spoke with said that they administer training at their station on how to conduct presumptive field testing.

training prior to using handheld electronic devices or fentanyl test strips. Most CBP field officials we spoke with said that they had a sufficient number of personnel at their facility who were trained to use this equipment, but in some cases it would be helpful to have additional officers or agents trained. In light of COVID-19, CBP headquarters officials told us that they have offered refresher training online for using handheld electronic devices as well as online training for using fentanyl test strips.

Documenting drug seizures and presumptive test results. CBP policy requires officers and agents to enter information about seized drugs into CBP data systems, and states that doing so in a timely manner is critical.²⁴ For example, basic information about the seized drug is to be entered within 24 hours of the seizure, the seizure report is to be completed within 24 hours of the initial entry, and supervisory review is required within 24 hours of the completion of the seizure report. We analyzed a limited sample of OFO and Border Patrol's drug seizure documentation to determine whether officers and agents are documenting seizures in a timely manner as required. We found that almost all seizures were documented and reviewed within the required timeframe (96 and 98 percent, respectively).²⁵

In June 2019 CBP began documenting additional information on the types of presumptive test devices that officers or agents used when seizing drugs—for example, whether they used a color-changing test kit or handheld electronic device. We provide additional information on CBP data later in this report.

Storing and transporting seized drugs. CBP policy describes requirements that its personnel are to follow when handling, storing, and transporting seized drugs.²⁶ For example, OFO's permanent seizure

²⁴CBP, *Seized Asset Management and Enforcement Procedures Handbook* (2011).

²⁵We reviewed 1,693 of OFO's drug seizure records that also involved an arrest and were entered in CBP's data systems during four months in calendar year 2019—one month per quarter. We found that 47 entries (2.8 percent) were completed late, while 13 (0.8 percent) were approved late. For Border Patrol, we analyzed 1,493 drug seizures during this same time period that also involved an arrest, and we found that 90 entries (6.0 percent) were completed late, while 37 (2.5 percent) were approved late.

²⁶CBP, *Seized Asset Management and Enforcement Procedures Handbook* (2011).

vaults for storing seized property must have a fully trained and qualified seized property specialist who is responsible for operation of the vault.

Short-term custody of individuals. During presumptive field testing, the suspected individual is held in CBP's short-term holding facilities. We previously reported that CBP and ICE have issued standards for the short-term custody of individuals that apply to their holding facilities nationwide. For example, CBP has established minimum standards that apply to both Border Patrol and OFO holding facilities, and each component also maintains a holding facility policy.²⁷

Confirming presumptive field test results. CBP policy does not require confirmatory testing of seized drugs, and prosecutors may rely on presumptive field test results when filing criminal charges. However, U.S. Attorney's Offices require confirmatory testing when pursuing federal prosecution, even where charges have been initiated on the basis of presumptive test results. As previously described, ICE and DEA have the first opportunity to investigate OFO's and Border Patrol's seizures, respectively, and these agencies may use CBP or DEA labs for confirmatory testing, according to officials.²⁸ When deciding which lab to use for confirmatory testing, ICE and DEA may consider physical proximity and processing times at the lab, among other factors.

CBP's LSS has national quality procedures that officials said reflect international standards and help ensure accurate, reliable, dependable, and uniform laboratory test results.²⁹ In addition, CBP regional labs have

²⁷CBP issued the *National Standards on Transport, Escort, Detention and Search* (TEDS) in October 2015, while Border Patrol issued the *Hold Rooms and Short Term Custody* policy in January 2008 and OFO issued the *Secure Detention, Transport, and Escort Procedures at Ports of Entry* in August 2008. The TEDS policy is intended as a foundational document, while the component-level policies generally contain more detail. See GAO, *Immigration Detention: Additional Actions Needed to Strengthen DHS Management of Short-Term Holding Facilities*, [GAO-16-514](#), (Washington, D.C.: May 26, 2016).

²⁸CBP officials told us that DEA generally uses DEA labs for confirmatory testing.

²⁹For example, these policies require technical review of test reports. Officials said that these policies mirror those of *ISO/IEC 17025:2017: General requirements for the competence of testing and calibration laboratories* (2017). According to its website, the International Organization for Standards brings together experts to share knowledge and develop voluntary, consensus-based, market relevant international standards that support innovation and provide solutions to global challenges.

local policies and procedures for confirmatory testing to help ensure compliance with national policies.

CBP Has Data on Tests Conducted and Timeliness, and Has Plans to Improve Reporting Capabilities

CBP Conducted at Least 90,000 Presumptive Field Tests from Fiscal Years 2015 Through 2020

OFO and Border Patrol conducted at least 90,000 presumptive field tests associated with the arrest of a person from fiscal years 2015 through 2020.³⁰ Of these approximately 90,000 tests, we found that OFO conducted 52 percent of the tests, and Border Patrol conducted 48 percent. With regard to location, ports of entry along the southwest border made up 79 percent of the presumptive tests OFO conducted, and Border Patrol stations and checkpoints along the southwest border made up 98 percent of the presumptive tests Border Patrol conducted.³¹

Of these 90,000-plus presumptive field tests, some data is available indicating the types of presumptive field test CBP conducted. Specifically, we found that OFO and Border Patrol used color-changing test kits for 50 percent of tests conducted and handheld electronic devices for 40 percent of tests conducted from fiscal year 2019 through the end of fiscal

³⁰We analyzed data from SEACATS, which CBP uses to track the disposition of seizures. Specifically, we analyzed the number of drug seizures conducted by OFO and Border Patrol that were associated with an arrest between fiscal years 2015 and 2020. CBP officials stated that they only seize a drug if the result of the presumptive field test is positive, and in this way all seizures in CBP's system are associated with a presumptive field test. We focused on seizures that included arrests because these seizures may involve a person being detained while awaiting the results of a confirmatory test. We also used these data to analyze the number and types of CBP's presumptive field drug tests associated with a seizure and an arrest from fiscal year 2019 through fiscal year 2020. We use the phrase "at least" to describe the number of presumptive field tests conducted because we analyzed data on drug seizures, but according to officials, multiple presumptive tests can be conducted for a single drug seizure.

³¹Border Patrol has nine sectors along the southwest border: San Diego, El Centro, Yuma, Tucson, El Paso, Big Bend, Del Rio, Laredo, and Rio Grande Valley. OFO has four field offices along the southwest border: El Paso, Laredo, San Diego, and Tucson.

year 2020.³² The remaining tests used other devices, such as fentanyl test strips.

We also found that CBP's use of different types of test equipment varied between OFO and Border Patrol. Specifically, OFO used handheld electronic devices for most of its tests, while Border Patrol used color-changing test kits for most of its tests. Specifically, 53 percent of OFO's presumptive field tests used handheld electronic devices, and 35 percent used color-changing test kits. For Border Patrol, 87 percent of tests used color-changing test kits and 6 percent used handheld electronic devices. CBP officials told us that they have focused their deployment of handheld electronic devices to high-risk locations—which CBP determines by assessing potential threats identified in the field, such as types of drugs encountered—and data indicate that over 85 percent of handheld electronic devices were deployed to OFO's ports of entry, as of October 2020.

Time for Completing Confirmatory Testing Decreased While the Number of Test Requests Increased From Calendar Years 2015 Through 2020

We found that the average time for CBP to complete confirmatory testing across all of its labs decreased overall from calendar year 2015 to 2020. As previously described, confirmatory tests are used for federal prosecution, and LSS conducts testing for agencies including OFO, Border Patrol, and ICE. Specifically, the average time to complete confirmatory testing decreased from 100 days in calendar year 2015 to 53 days in calendar year 2020, as of September 2020. The time to complete

³²Although CBP officials told us that they began collecting this data in June 2019, we found that SEACATS includes some records of presumptive tests conducted prior to June 2019. Officials said that this occurred because CBP officials can review and update prior seizure records.

confirmatory testing averaged across all calendar years was about 85 days.³³

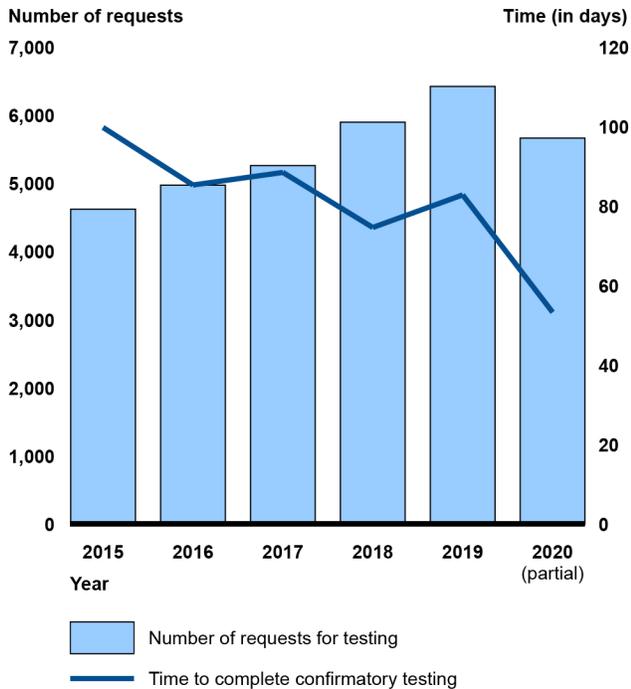
Although the average time to complete confirmatory testing across all of CBP's labs decreased overall during this time period, some variation exists among CBP's regional labs. Specifically, the time to complete confirmatory testing during this time period decreased at four of CBP's labs and increased at four labs.

During this same time period, the total number of requests for confirmatory testing across all labs increased. Specifically, LSS received 4,619 requests for confirmatory testing in calendar year 2015 and 5,662 requests in calendar year 2020, as of September 2020.³⁴ CBP officials told us that they have taken various steps to decrease the time to conduct confirmatory testing despite the increase in requests for testing, as described later in this report. See Figure 2 for more information on the number of requests and time to complete confirmatory testing.

³³We analyzed data from the Laboratory Information Network, which LSS uses to document requests for analysis and laboratory reports. Specifically, we analyzed how long it took LSS to complete confirmatory testing for agencies that submitted requests for confirmatory testing from calendar year 2015 through calendar year 2020. Calendar year 2020 includes data from January 1, 2020 to September 24, 2020, which were the most recent data available at the time of our request. These data include but are not limited to requests for confirmatory testing of suspected drugs seized by OFO and Border Patrol because information on which agency submitted the request for testing, and the case number related to the presumptive test, are not required to be documented in the Laboratory Information Network. Therefore, these data may include some requests for confirmatory testing that are not associated with the presumptive tests that OFO and Border Patrol conducted from fiscal years 2015 through 2020. However, CBP officials we spoke with said that about 95 percent of requests are submitted by OFO, Border Patrol, and ICE, which investigates OFO seizures. For purposes of our analysis, the time to complete confirmatory testing begins when LSS receives a case for confirmatory testing and ends when LSS issues a final lab report.

³⁴Some requests for confirmatory testing may include more than one suspected drug sample, each of which is to receive a confirmatory test. This could occur, for example, if the investigating agency needs multiple samples of the same drug to be confirmed for prosecution, or if a single seizure included more than one suspected drug type.

Figure 3: Average Time to Complete Confirmatory Testing and Number of Requests for Testing Processed Across all U.S. Customs and Border Protection (CBP) Laboratories, Calendar Year 2015 to September 2020



Source: GAO analysis of CBP data. | GAO-21-286

Note: The data for calendar year 2020 is from January 1, 2020 to September 24, 2020—the most recent data available at the time of our request. Some requests for confirmatory testing may include more than one suspected drug sample, each of which is to receive a confirmatory test. Our analysis is based on CBP data that include but are not limited to requests for confirmatory testing of suspected drugs seized by CBP’s Office of Field Operations or U.S. Border Patrol.

CBP Has Plans to Improve Its Capabilities For Reporting on Confirmatory Testing

CBP’s current systems do not link presumptive and confirmatory testing results, making it difficult for CBP to use the systems to systematically determine the extent to which confirmatory tests align with results from presumptive field tests. CBP officials told us that they can compare the results of a presumptive field test and a confirmatory test on a case-by-case basis by reviewing information from separate data systems, but that the agency’s existing software systems do not allow CBP to systematically match the results.³⁵ Thus, CBP does not have data to

³⁵Officials told us that CBP’s system for documenting confirmatory test results sends a document containing the test results to the individual who requested the test. In this way, CBP officials can review confirmatory test results on a case-by-case basis.

readily assess the extent to which confirmatory tests confirm results from presumptive field tests.

In an effort to address this issue, LSS has taken initial steps to upgrade the software system it uses to document confirmatory test results, which should provide CBP with additional reporting and monitoring capabilities. LSS has issued a request for information to update its software and has received 10 responses from companies. The statement of work for the software upgrade requires that the new software be able to communicate directly with other CBP data systems. Officials stated that this should allow CBP to systematically analyze the extent to which presumptive field test results align with confirmatory test results.

CBP Analyzes New Test Equipment and Leverages Laboratory Resources to Help Ensure Timely and Accurate Field Drug Testing

CBP Identifies, Tests, Deploys, and Tracks Equipment to Meet Field Needs

CBP headquarters and field offices work together to identify gaps in presumptive field testing equipment and test potential solutions to determine their effectiveness in identifying potential illicit drugs. After testing, CBP then deploys equipment to the field and tracks the field's use of equipment as needed. In this way, CBP helps to ensure timely and accurate field testing and meet field needs.

Identifying gaps in equipment. CBP officers and agents in the field identify and communicate to CBP headquarters any challenges or limitations with presumptive field test equipment. As part of this, OFO and Border Patrol headquarters are responsible for gathering intelligence from field officials about new threats identified in the field. CBP headquarters offices then work with LSS to test and evaluate potential equipment to help address the challenges identified in the field.

For example, according to CBP documents and officials, CBP officers in the field were encountering fentanyl that their color-changing test kits could not identify prior to 2016. As a result, officials stated that OFO and

Border Patrol worked with LSS on a field study to determine what available equipment could presumptively test for fentanyl. As another example, OFO became aware that a new type of color-changing test kit was commercially available and requested that LSS compare its performance to test kits already in use.

Testing equipment. According to CBP headquarters officials, LSS is responsible for testing and analyzing different presumptive test equipment to determine which devices would be most effective in the field. As part of this, LSS conducts evaluations that compare new presumptive field test equipment to equipment currently in use. OFO and Border Patrol use these assessments to determine which presumptive test equipment to use. Additionally, headquarters officials said that CBP coordinates and consults with industry officials about available equipment to address emerging threats, and then tests the equipment to see if it will work in CBP's environment.³⁶

For example, as previously described, LSS published a study in July 2020 that evaluated the ability of four types of chemical screening devices to detect fentanyl at low purity levels. CBP conducted this study in response to a DHS Office of Inspector General report which found that CBP had purchased and was using equipment with limitations in detecting fentanyl with low purity levels, which was the majority of fentanyl seized at the southwest border.³⁷ In response to CBP's assessment, the Office of Inspector General closed the recommendation as implemented.

Additionally, according to officials, CBP collaborated with industry officials to identify and acquire available technologies as part of its efforts to acquire presumptive test equipment for fentanyl and worked with LSS to test the equipment. For example, in another effort to identify and test equipment to presumptively identify fentanyl, CBP determined that a specific handheld electronic device it had considered using would not meet its requirements. As another example, as previously described, LSS tested and compared the effectiveness of different color-changing test kits when a new color-changing test kit became available. LSS also compared

³⁶LSS officials told us that they review manufacturers' information on presumptive test equipment, which in some cases includes information about the accuracy of the test equipment. LSS conducts its own studies to help determine the accuracy of the presumptive test equipment in the CBP field environment.

³⁷OIG-19-67.

the effectiveness of the current and new color-changing test kits to handheld electronic devices and fentanyl test strips.

Deploying equipment. After identifying and testing potential equipment to meet field needs, CBP deploys the equipment to the field. For example, as part of the 2016 field study to identify new equipment to detect fentanyl, CBP considered purchasing and deploying two different devices to ports of entry that performed well in testing. As of October 2020, CBP deployed 334 of one of these devices to ports of entry, including at least one in each field office. CBP deployed 56 to U.S. Border Patrol stations and checkpoints, including at least one in all sectors and major checkpoints along the southern border.³⁸ Further, in another effort to identify equipment to presumptively test for fentanyl—specifically at lower purity levels—CBP deployed fentanyl test strips to all OFO field offices and provided training to officers and agents in the field, according to officials. CBP continues to train field officials to use this presumptive field test.

CBP headquarters officials told us that they deploy and allocate presumptive testing equipment to the field based on factors such as threat levels, amount of drug seizures, and geographic considerations. For example, CBP officials said that international mail facilities are generally first priority for the deployment of equipment, while land ports of entry along the southwest border are second priority. Additionally, officials stated that not all ports of entry have or require handheld electronic devices for presumptive testing, such as smaller ports of entry.

Tracking equipment and its usage. CBP has efforts to track equipment and help ensure that it is deployed in appropriate numbers and locations that best meet field needs. For example, CBP leveraged an existing technology to begin tracking usage and seizure information, such as the amount of illicit drugs seized for handheld electronic devices used for

³⁸As previously described, we use the phrase “handheld electronic device” to refer to CBP’s most commonly used device. Some CBP field officials we spoke with said that they also use a limited number of additional devices produced by a different manufacturer, which were recommended as part of this effort by LSS.

presumptive testing beginning in 2019.³⁹ According to officials, this effort will collect data on the total number of tests conducted for handheld electronic devices, whereas CBP only documents and collects information on presumptive testing when it conducted a seizure based on a positive presumptive test. CBP officials said that this effort will help officials see how often equipment is used, where equipment is assigned across the country, and allow CBP to adjust how the equipment is distributed in the field, if needed. According to a CBP official, CBP expanded this data collection effort to all OFO field offices in January 2021.

Further, headquarters officials told us that LSS collects data from handheld electronic devices, which provides the agency information to identify new and emerging drugs to add to the device library, based on specific drugs that are encountered more frequently in the field. According to these officials, these are included when LSS builds its library for handheld electronic devices.

LSS Has Taken Actions to Help Ensure Timely and Accurate Testing and Meet Field Needs

LSS helps ensure timely and accurate presumptive and confirmatory testing in various ways, such as deploying mobile labs in the field and providing real time assistance with test results, among other efforts. In addition, as previously mentioned, officials from LSS have taken initial steps to upgrade the software system it uses to document confirmatory test results—which should provide CBP with additional reporting and monitoring capabilities.

Enhancing field testing capabilities. LSS enhances presumptive and confirmatory field testing capabilities by building permanent onsite labs in certain field locations and deploying mobile labs to the field.

LSS initially developed forward operating labs, which are permanent onsite labs co-located at ports of entry and Border Patrol stations, in response to the opioid crisis in 2017. All of these labs provide support for presumptive field testing, and one forward operating lab can also conduct confirmatory testing, according to officials. These forward operating labs provide additional laboratory and personnel support to LSS to bring

³⁹Since 2017, CBP has used its Equipment Transactional Analysis Platform to track large scale equipment such as X-rays that scan personal or cargo vehicles. Beginning in 2019, CBP piloted an effort to track additional equipment, such as baggage scanners and certain presumptive testing equipment. According to CBP officials, the pilot's goal was to determine if CBP could track usage and seizure information for this equipment. Officials said that CBP initiated this effort in part because this equipment is typically used more often and by more field officers than larger scale equipment.

testing support to strategic areas. For example, officials at a port of entry said that their forward operating lab was created to assist with conducting confirmatory testing during the opioid crisis, and nearby Border Patrol stations and a port of entry have used the forward operating lab. CBP initially created forward operating labs at two international mail facilities and has implemented additional forward operating labs in nine locations, with plans for two additional locations.⁴⁰

In addition to forward operating labs, LSS has a fleet of mobile labs that it can deploy to provide onsite presumptive testing capabilities with the additional flexibility to move these labs around the country in response to changing threats or requests from CBP field locations.⁴¹ Like forward operating labs, mobile labs allow LSS to provide additional, temporary laboratory and personnel capabilities to locations across the country. For example, field officials at a port of entry stated that they have requested assistance with identifying substances with inconclusive presumptive test results from a mobile lab stationed nearby. As another example, LSS officials at headquarters stated that when one regional lab that did not have mobile labs wanted to deploy one, a regional lab in another state lent their mobile lab.

Supporting use of field testing capabilities. CBP supports field testing capabilities by updating testing equipment, providing real time assistance to help interpret presumptive test results, and providing equipment, training, and resources.

LSS updates handheld electronic devices to ensure field officials can accurately identify potential illegal drugs and is responsible for developing and updating CBP's library for handheld electronic devices, which includes new and emerging drugs. According to CBP policy, all users of handheld electronic devices are required once per month to submit to CBP spectral scans, which are copies of a chemical's composition, from the presumptive field tests they conducted. LSS uses this information to

⁴⁰There are currently 11 forward operating labs specifically intended for presumptive or confirmatory testing. According to officials, forward operating labs located at ports of entry conduct presumptive or confirmatory testing, while ones at Border Patrol stations conduct latent print analysis, which is outside of the scope of our report. There are currently five forward operating labs located at Border Patrol stations for this type of analysis, with plans for an additional location.

⁴¹There are currently seven mobile labs that can be deployed for onsite presumptive testing.

review and update the device's spectral library, which contains copies of the spectrum of a variety of different illicit drugs to test them in the field.⁴² A senior CBP official said that LSS updates its handheld electronic devices' library approximately twice per year, and will update the library with single substances when deemed they are an immediate threat. The handheld electronic devices come pre-loaded with over 14,000 items, and LSS has added 90 spectra to the devices' library.

Additionally, LSS provides round-the-clock access to chemists who provide CBP officers and agents with guidance on interpreting data from presumptive tests. Officers and agents in the field can send test information to these chemists, who provide a presumptive test result. This capability was established in 2018 in response to the opioid crisis as a part of the INTERDICT Act.⁴³ LSS had this capability since 2014 with more limited hours and for a more limited range of presumptive test devices, and LSS expanded this capability in 2018 to the current 24-7 center. CBP field officials we spoke with stated that they used this support when they encountered unknown or unidentified substances. For example, officials from an airport said they used LSS' support to presumptively identify a substance.

LSS also provides refresher training and resources to field officials that supplement the training previously described. Officials from LSS' regional labs and headquarters, along with field officials at ports of entry, told us that LSS provides refresher training and information on trends in drug seizures. For example, officials from regional labs told us that, upon request from the field, they train officers and agents on how to use presumptive test equipment, including handheld electronic devices and color-changing test kits. As another example, officials at a port of entry said that LSS provides officers refresher training at their port once per quarter and by request regarding the use of handheld electronic devices. In addition, according to a headquarters official, LSS has offered to instruct future virtual courses on how to use fentanyl test strips to field locations by request during the COVID-19 pandemic. Regarding reports on field trends in drug seizures, LSS produces monthly reports that provide trend analysis and identify new drug analogues, which are based

⁴²A spectral library can contain chemical signatures for many known substances, including illegal drugs. Each chemical substance has a unique composition and chemical signature. The measured signatures of a sample obtained in the field can be compared to the spectral library to presumptively identify the chemical components of a sample.

⁴³Pub. L. No. 115-112, 131 Stat. 2274.

on presumptive testing data within the past 30 days, and LSS distributes these reports to the field.

Aligning labs' organization and staffing to meet field needs. LSS has analyzed its regional labs' areas of responsibility and staffing levels to better align with field needs. Specifically, each CBP regional lab has an assigned area of responsibility for OFO and Border Patrol, and provides confirmatory testing to each area. In 2019, LSS realigned some regional labs' area of responsibility to better meet field needs. According to officials, CBP's effort to realign the areas of responsibility for its regional labs reduced the physical distance between CBP field locations and regional labs.

As another example, LSS analyzed the allocation of staff overall across its regional labs and at each individual regional lab to better address CBP mission needs. As previously mentioned, in 2018 we reported that a surge in the interdiction of illegal drugs, including synthetic opioids, had led to backlogs at CBP's regional labs.⁴⁴ We recommended that CBP take a risk-based approach to allocating its laboratory resources. In June 2020, LSS sponsored a study that assessed its allocation of lab resources and found that current staffing levels at its regional labs matched past demand for confirmatory testing, based on the number of requests for testing. The study recommended no changes to LSS' total staff level across its regional labs, but suggested some changes to staff allocation at each regional lab. Additionally, the study included a tool to determine optimal staffing levels based on different demand levels across all regional labs and at each regional lab. Officials from LSS said that they would run the model on a quarterly basis to ensure that their staffing allocation to the regional labs ensures that CBP can strike the appropriate balance of volume and risk for its labs, and last ran the model in October 2020. According to these officials, LSS planned to run the model again in February 2021 because LSS hired additional staff. Based on these efforts, in October 2020 we closed this recommendation as implemented.

Agency Comments

We provided a draft of this report to DHS and DOJ for review and comment. DHS and DOJ provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, and the Attorney

⁴⁴[GAO-18-205](#).

General. In addition, this report will be available at no charge on the GAO website at <http://www.gao.gov/>. If you or your staff have any questions about this report, please contact me at (202) 512-8777 or gablerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix I.

Sincerely yours,

A handwritten signature in black ink that reads "Rebecca Gambler". The signature is written in a cursive, flowing style.

Rebecca Gambler
Director
Homeland Security and Justice

Appendix I: Contacts and Staff Acknowledgments

GAO Contact

Rebecca Gambler, (202) 512-8777 or gablerr@gao.gov

Staff Acknowledgements

In addition to the contact named above, Kirk Kiester (Assistant Director), Dave Bieler (Analyst-in-Charge), Mariel Alper, Elizabeth Dretsch, Ricki Gaber, and Sasan J. "Jon" Najmi made key contributions to this report. Also contributing to this report were Howard Arp, Eric Hauswirth, Dennis Mayo, Sara Ann Moessbauer, Jan Montgomery, Rebecca Parkhurst, and Kevin Reeves.

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