Dated: March 18, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

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21 CFR 1313

[DEA Number 145N]

Export of Chemicals From the United States to Colombia; Policy Statement

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Policy statement.

SUMMARY: Notice is hereby given that regular customer status for Colombian customers is being revoked under Section 1018(c)(1) of the Controlled Substance Import Export Act (CSIE) (21 U.S.C. 971(c)(1)). Each U.S. exporter is being informed by letter that they must notify DEA at least 15 days in advance of shipment of certain chemicals listed in 21 CFR 1310.04, if the shipment is from the United States with an ultimate destination of Colombia. Moreover, in view of the danger that chemical shipments may be diverted into the illicit manufacture of cocaine, a heightened review process will be instituted for such exports and for transhipments. The exception under Title 21, Code of Federal Regulations (21 CFR), Section 1313.24, allowing exporters to notify DEA as late as the day of shipment for transactions between a ''regulated person'' and a ''regular customer'' will not apply to shipments of certain chemicals to Colombia until further notice.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: William Wolf, Chief, Chemical Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7204.

SUPPLEMENTARY INFORMATION: The following is a statement of policy by the Drug Enforcement Administration (DEA) under the Controlled Substances Act, as amended by the Chemical Diversion and Trafficking Act of 1988 (CDTA), regarding exports of certain listed chemicals from the United States to Colombia.

On March 1, 1996, the President of the United States, under the Annual Certification Procedures Act (22 U.S.C. Section 2291j), moved to decertify Colombia's status as a nation actively cooperating with the United States to stem the clandestine manufacture and trafficking of illegal drugs. This action was taken in response to overwhelming evidence of rampant drug-related corruption at the highest levels of the Colombian government. In direct contravention of efforts by Colombian law enforcement officials and the judicial sector to root out drug-related corruption, elements of the Colombian government have systematically undermined and publicly attacked these efforts while failing to support the efforts of Colombian law enforcement to strengthen the nation's institutions to combat the destructive effects of narcotics traffickers.

These problems have also adversely affected the ability of the Colombian Government to insure that listed chemicals imported from the U.S. and other sources are not diverted into the illicit manufacture of cocaine.

At a time when the Colombian government's commitment to combating narcotic trafficking has deteriorated, as evidenced by shifting the import permit approvals outside the existing infrastructure for chemical control, DEA data reveals a 57% increase between 1990 and 1995 in the sales to Colombia of List II solvents that are used in the clandestine manufacture of cocaine. These sales by U.S. chemical firms, which were based primarily upon Colombian authorization, are estimated by the Colombian Director of Customs to comprise 59% of the listed chemicals now imported into Colombia and, unfortunately, coincide with continued large scale illicit cocaine production within Colombia. DEA has concluded, therefore, that all shipments to Colombia of certain chemicals may be diverted to the clandestine manufacture of a controlled substance.

The CDTA, the Domestic Chemical Diversion Control Act (DCDCA) and the implementing regulations have established a system of recordkeeping and reporting requirements that provide DEA with a mechanism to track domestic and international movement of listed chemicals in order to prevent their being diverted for use in the clandestine manufacture of controlled substances.

Section 1018(a) of the CSIE (21 U.S.C. 971(a)), as amended by the CDTA, provides that ''each regulated person who imports or exports a listed chemical shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction is to take place.'' In accordance with Section 1018(b) (21 U.S.C. 971(b)), this requirement is modified by 21 CFR 1313.24 where the transaction is between a ''regulated person'' and a ''regular customer.'' Under normal circumstances, exporters are allowed to ship listed chemicals to regular customers with notification as late as the day of shipment.

A person located in the United States who is a broker or trader for an international transaction of a listed chemical is subject to all of the notification, reporting, recordkeeping, and other requirements placed upon exporters of listed chemicals. No waiver of the 15-day advance notice is permitted under Section 1313.31 for importations and exportations for transhipment purposes of threshold quantities of listed chemicals.

Regardless of whether the shipment is a direct export or a transhipment, DEA has the obligation to examine the notification in order to determine if the shipment is legitimate and that the chemical will not be diverted to the illicit manufacture of controlled substances. Due to the distribution network within Colombian, where large quantities of the chemicals used in the clandestine manufacture of illegal controlled substances are redistributed by the importing customer, bestowing ''regular customer'' status on the importer is ineffective in assuring legitimate usage.

As underscored by the President's action to decertify Colombia as a cooperating nation due to widespread corruption, DEA is unable to determine the legitimacy of shipments of the specified chemicals or to rely on import permits and other documentation issued by the Colombian Government that the above chemicals are not being diverted for use in the clandestine manufacture of controlled substances. Although the Colombian National Police have been diligent and constructive in their efforts to monitor the legitimacy of chemicals imported into Colombia, its efforts have been handicapped by inadequate political and resource support. DEA has no confidence that those customers previously submitted as regular customers, nor those who would become regular customers in the future, as specified in 21 CFR 1313.24, are not diverting the above chemicals to the illicit drug traffic. Therefore, in the absence of a way to determine with any reasonable degree of certainty that chemical shipments will not be diverted, pursuant to Section 1018(c)(1) of the CSIE (21 U.S.C. 971(c)(1)), DEA will act to disqualify regular customer status for Colombian importers of MEK, MIBK, acetone, toluene, potassium permanganate, and ethyl ether. Accordingly, each U.S. exporter is being informed by letter that for all shipments of these chemicals to Colombia, the exporter must now file a Chemical

Export Declaration (DEA Form 486) at least 15 days in advance of the shipment date in accordance with 21 CFR 1313.21 for every shipment of a threshold amount of the above listed chemicals to Colombia. All subsequent shipments of any of the identified chemicals to the same customer will continue to require 15 day advance notice and evidence of a documented legitimate need.

Furthermore, because DEA has concluded that all shipments to Colombia of the above chemicals may be diverted to the clandestine manufacture of a controlled substance, pursuant to 21 CFR 1313.41, it is DEA's intent to suspend such exports and imports for transhipment in the absence of documented proof of ultimate legitimate use. Shipments of these chemicals will be closely monitored by DEA to determine whether the exporters have presented sufficiently detailed documentation for DEA to conclude that the ultimate users have the specific, legitimate need for the type and quantity of the chemical being purchased and, that the chemical will not be used for the clandestine production of controlled substances. Export declarations and Notices of Importation for Transhipment for the specified chemicals will be reviewed utilizing the following criteria:

A. Whether the U.S. exporter, broker, or foreign exporter for transhipment has shown that the end use for all of the chemical will be for a legitimate purpose;

B. If the importer is not the end user, whether all users or distributors through to the end users are identified to DEA with sufficient documentation to confirm the legitimacy of their chemical needs; and

C. Whether the quantity and type of chemical is consistent with the nature and size of each end user's business.

A person who knowingly or intentionally exports a listed chemical in violation of section 1018 shall be fined in accordance with Title 18, imprisoned not more than 10 years, or both (21 U.S.C. 960(d) (5) and (6)).

U.S. and foreign exporters, and brokers are cautioned to view every order of these or substitute chemicals from Colombia and other countries in the region with extreme caution. In view of the existing evidence that all shipments to Colombia of the above chemicals may be diverted to the clandestine manufacture of a controlled substance, firms should recognize that export declarations and Notices of Importation for Transhipment will be subjected to the heightened standard of review set forth herein with respect to the identity of the end users and the documented legitimacy of usage. Failure to meet this standard will result in the suspension of the shipment pursuant to 21 CFR 1313.41.

Dated: March 22, 1996.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 96–7546 Filed 3–27–96; 8:45 am]

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UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Statement of policy.

SUMMARY: Since August of 1990, the Agency has continued its oversight of Summer Travel/Work programs, notwithstanding suggestions that the Agency is in fact without statutory authority to conduct such programs as currently configured. The Agency hereby announces its acceptance, as statutorily sound, of four Summer Travel/Work programs. A two year period of additional review of a fifth program is also hereby announced and adopted.

EFFECTIVE DATE: This policy statement is effective March 28, 1996.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; Telephone, (202) 619–6829.

SUPPLEMENTARY INFORMATION: In February of 1990, the General Accounting Office (''GAO'') issued its report entitled ''Inappropriate Uses of Educational and Cultural Exchange Visas.'' This report specifically identified Summer Travel/Work programs designated by the Agency for the past twenty-five years as an example of programs operating outside of the statutory parameters set forth under the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act.) As currently configured, Summer Travel/Work programs permit foreign university students to enter the United States during their summer months for the purpose of travel and the pursuit of employment opportunities wherever they may be found. Approximately 16,000 foreign university students to charges of inappropriate use of the Exchange Visitor Program and brought about, in March of 1993, the promulgation of new and comprehensive regulations governing exchange activities. These regulations, in turn, resulted in changes to the operations of flagship exchange programs and other programs of long-standing and venerable reputation. Underlying this policy and regulatory review was the Agency's identification of the core components of an exchange activity. These components—selection, screening, orientation, placement, monitoring, and the promotion of mutual understanding—define what an exchange is and whether one is actually occurring.

The use of these components in a review of the Summer Travel/Work programs demonstrates clearly why the Agency has determined that it lacks sufficient authority to continue the programs as currently configured. Today, five organizations conduct Summer Travel/Work programs pursuant to two substantially different program designs. Four of the five programs arrange all details of the program including prearranged employment and accommodations. The remaining program, accounting for approximately 12,000 of all participants, does not make advance arrangements for employment or accommodations. Participants in this program are left to their own devices in securing both employment and accommodation.

Given the design and operation of these four programs and their selection, screening, orientation, placement, and monitoring of program participants, the Agency is satisfied that statutory conformity is possible. Accordingly, the Agency has determined that these four Summer Travel/Work programs should be allowed to expand both their number of program participants and the countries from which they are selected. Program guidelines have been developed and the four programs currently selecting, screening, orienting, placing, and monitoring their program enter each year for this purpose.

The 1990 GAO report was the catalyst for what has become a five year debate regarding the public diplomacy value of Summer Travel/Work programs and the Agency's legal authority to continue them under the aegis of the Fulbright-Hays Act. The debate surrounding these programs occurs entirely along the fault lines that necessarily underlie the intersection of law and policy. The legal considerations of this debate are straightforward, while the policy considerations are less so.

Statutory Considerations

The Immigration and Nationality Act, as amended, sets forth at 8 U.S.C.