

October 17, 2016

Michael J. Lewis
Office of Diversion Control
Drug Enforcement Administration
8701 Morrissette Drive
Springfield, Virginia 22152
Via Electronic Filing at <http://www.regulations.gov>

RE: Revision of Import and Export Requirements for Controlled Substances, Listed Chemicals, and Tableting and Encapsulating Machines, Including Changes To Implement the International Trade Data System; Revision of Reporting Requirements for Domestic Transactions in Listed Chemicals and Tableting and Encapsulating Machines; and Technical Amendments; Notice of Proposed Rulemaking, Docket ID No. DEA-403

Dear Mr. Lewis:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the notice of proposed rulemaking published by the Drug Enforcement Administration (DEA) regarding Docket No. DEA-403, Revision of Import and Export Requirements for Controlled Substances, Listed Chemicals, and Tableting and Encapsulating Machines, Including Changes To Implement the International Trade Data System; Revision of Reporting Requirements for Domestic Transactions in Listed Chemicals and Tableting and Encapsulating Machines; and Technical Amendments.

About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

NACD Does Not Support the Proposed Rule As Written

NACD does not support the proposed rule as written due to several concerns and inconsistencies.

A. DEA Should Clarify the Requirements Around Import/Export Transactions

In the preamble to the rule, DEA states that “An import or export transaction would not be allowed to take place until the transaction identification number has been issued and 15 calendar days have elapsed from the date a complete declaration was filed.”

However, in the text of the rule for **imports**, there is no mention of the requirement for the transaction identification number to be issued before a transaction can take place and DEA only states the following: “The 15 calendar days shall begin on the date that the regulated person submits a completed declaration, without regard to the date that the Administration assigns a transaction number.” For **exports**, DEA states the following: “The 15 calendar days shall begin on the date that the regulated person submits a completed declaration, without regard to the date that the Administration assigns a transaction number. Exporters may not request release of a listed chemical until a transaction identification number has been issued.”

NACD requests clarification on the differing requirements for an import or export transaction to proceed. Does DEA intend for exports to be treated differently than imports?

B. DEA Should Establish a Deadline By Which It Will Issue Transaction Identification Numbers

The preamble of the proposed rule states, “Declarations, permits and most other regulatory filings with DEA would not be deemed filed until a transaction identification number (or permit number) is issued by the DEA... The DEA considered, but ultimately did not choose to propose, a specific timeframe in which transaction identification numbers (and permit numbers) will be issued because of concern of instances that require longer-than-average review and processing times...” NACD is concerned about the DEA’s lack of accountability to the businesses the agency regulates. Chemical distributors, like all businesses, make decisions based on timing and reliability of their suppliers and strive to provide their customers with accurate windows by which they can expect to receive their products. With the DEA deciding not to give itself an internal deadline by which to review and issue a transaction identification number, and consequently not allow transactions to proceed, they are opening up the opportunity for shipments to be delayed indefinitely.

Without a general estimate of when chemical distributors can expect a transaction to be issued a transaction identification number, there is a strong possibility for delays or even for cancelled shipments, both of which can result in direct monetary expense to the importer or exporter. Waiting for the transaction identification number will make it extremely difficult for companies to plan their shipment time, especially if the time for DEA to complete a review varies widely from transaction to transaction. For example, if an import is held up by customs due to extended DEA review it could run up additional demurrage charges. In some cases, the product is paid for up-front upon ordering so that every day it is held up, it also is costing the importer. Alternatively, if a company decides to wait for the DEA transaction identification number before placing an order with an overseas supplier, they could lose business. Some

overseas suppliers will only hold a price quote for 15-20 days and if DEA takes longer than expected to issue a transaction identification number, the price could change or the supplier could no longer have the quantity it previously quoted. Further, if a company decides to place the order anyway and instructs the overseas supplier to wait for the transaction identification number, the supplier could accidentally ship the product anyway or delay the shipment so much that the importing company can run into issues with meeting customer demand.

If DEA remains concerned about “instances of longer-than-average review and processing time,” NACD recommends that DEA determine an initial time period by which the transaction identification number should be issued for an average transaction and, under extenuating circumstances, allow an extension of an additional two business days to review instances that require the longer-than-average review time. With this solution, DEA still allows itself the extra time needed only for the transactions that take longer to review, and businesses have the certainty of knowing an absolute date by which their product must be deemed filed.

To reiterate, NACD strongly recommends DEA to establish a regulatory timeframe by which the agency will issue transaction identification numbers to allow for business certainty. NACD recommends an initial deadline of three business days for DEA to review a transaction and issue a transaction identification number.

C. DEA Should Allow Listed Chemicals to Be Relieved of the 15-Day Waiting Period as Allowed for Controlled Substances

The preamble of the proposed rule states that transactions of controlled substances can “proceed with the import or export transaction as soon as the identification number has been issued, regardless of whether the 15 calendar days have elapsed since its issuance.” However, for listed chemicals, the preamble of the proposed rule states the following: “The DEA would issue a transaction identification number once the DEA reviewed a listed chemical import or export declaration for completeness, and the 15 day reporting clock would begin on the date that the importer or exporter files a complete declaration. An import or export transaction of a listed chemical would not be allowed to take place until the transaction identification number has been issued and 15 calendar days have elapsed from the date a complete declaration was filed.”

Listed chemicals are under DEA regulation due to their potential to create controlled and illicit substances; therefore, it simply doesn’t make sense to treat them with greater controls than the substance which they have the *potential* to be. DEA does not explain the reasoning behind this decision, and it is inconsistent with other DEA regulations that treat controlled substances with stronger regulation than listed chemicals.

NACD recommends DEA modify the proposed rule to state that listed chemicals can also proceed with the import or export transaction as soon as the transaction identification number has been issued, regardless of whether the 15 calendar days have elapsed since its issuance.

D. NACD Requests Clarity on the Implementation of Calendar Days/Business Days for Regular Importer and Exporter Advance Notifications

According to the proposed rule, regular importers and exporters must now provide DEA Form 486 via DEA’s secure network application at least three days before the date of release by a

customs officer at the port of entry. DEA posits that it needs at least three days to review the information and transmit the applicable data to the ITDS. In the preamble to the rule, DEA states, “The DEA proposes now to describe circumstances in which importers and exporters will not be subject to the 15-day advance notification requirement but must provide 3 *calendar*-days advance notification. The DEA does, however, propose to allow registrants to proceed with the import or export transaction as soon as the transaction identification number has been issued, regardless of whether the 3-calendar-day period has concluded.”

However, in the text of the rule itself, the language states, “For imports meeting the requirements of paragraph (c)(1) of this section, the declaration (DEA Form 486/486A) must be filed with the administration through the DEA Office of Diversion Control secure network at least three *business* days before the date of release by a customs officer at the port of entry.” This text is repeated for exports. Furthermore, there is no mention for imports or exports of the stipulation in the preamble that registrants will be allowed to proceed with the transaction once the transaction identification number has been issued, regardless of whether the three (business/calendar) days have passed.

NACD requests DEA clarify the discrepancy between whether this requirement is three calendar days or three business days and suggests that, since the time period is so small, DEA use its proposed text of three business days to allow sufficient time for businesses to react to the unexpected delays or unexpected promptness of shipments. NACD recommends DEA add appropriate language within the text of the rule clarifying its statement in the preamble that registrants can proceed with the import or export transaction as soon as the transaction identification number has been issued regardless of whether the three (business/calendar?) days have passed.

Conclusion

NACD appreciates DEA’s efforts to update and revise regulations to allow for electronic submission of important filings and for working to establish an interconnected system through the International Trade Data System. However, DEA should create a regulatory system that is predictable and feasible for businesses while allowing DEA necessary time to review import and export transactions that are critical to DEA’s mission.

We highly recommend that DEA take the steps outlined above to establish predictable regulatory filings and DEA approval for U.S. businesses to import and export chemicals in a timely fashion. NACD especially urges DEA to review carefully and closely all proposed rules for impact upon the business community when doing business internationally and consider the financial impact upon businesses when shipments are delayed.

Thank you for the opportunity to comment on this important issue. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



NACD Comments to DEA Docket ID No. DEA-403

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