

August 11, 2017

Mr. Robert Hinchman
Senior Counsel
Office of Legal Policy
U.S. Department of Justice
Room 4252 RFK Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Via Electronic Filing at <http://www.regulations.gov>

RE: Enforcing the Regulatory Reform Agenda; Department of Justice Task Force and Regulatory Reform Under E.O. 13777, Docket No. OLP 164

Dear Mr. Hinchman:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the Department of Justice request for public comment regarding Docket No. OLP 164, Enforcing the Regulatory Reform Agenda; Department of Justice Task Force on Regulatory Reform Under E.O. 13777.

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.

Regulatory burden reduction is a top priority for NACD. Our members need regulations that are clear, consistent, non-duplicative, and fairly and reasonably enforced. NACD supports the objectives of Executive Orders (EO) 13771 and 13777, Reducing Regulations and Controlling Regulatory Costs and Enforcing the Regulatory Reform Agenda, respectively.

DEA Should Modify the Import/Export Rule to Remove the Requirement of a Transaction Identification Number

Our comments concern the Drug Enforcement Administration (DEA) final rule "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 (ITDS); Revision of Reporting Requirements for Domestic Transactions in Listed Chemicals and Tableting and Encapsulating Machines; and Technical Amendments” issued December 30, 2016 and its respective proposed rule issued September 15, 2016.

The preamble of the proposed rule stated, “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. In 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, the DEA is opening up the opportunity for shipments to be delayed indefinitely. In our comments on the proposed rule dated October 16, 2017, NACD suggested that a timeframe by which transaction identification numbers should be issued would help businesses in their planning. However, the DEA did not agree and stated “The DEA understands the commenters’ sensitivity to time and potential for competitive advantage/disadvantage based on timely shipment of products. However, the DEA declines to set a specific timeframe for the issuance of a TIN.”

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 because of extended DEA review, it could run up additional demurrage charges. In some cases, the product is paid for up front upon ordering; so, every day it is held up, it is also 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 long that the importing company could run into issues with meeting customer demand.

NACD recommends DEA completely remove this portion of the rule that modifies requirements for chemical importers and exporters by requiring them to obtain a transaction identification number for declarations, permits, and most other regulatory filings.

Alternatively, 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 importers or exporters 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.” The DEA maintained these same provisions within the final rule.

Again, this will cause major problems for companies that import chemicals. For example, one NACD member routinely sells two listed chemicals they import from Europe. They do not get the information about the shipment to file the DEA 486 form until approximately two days after the vessel with the material on it has sailed. If they file the DEA 486 at the very moment they receive the information, it can take as little as 10-15 days before the material arrives in the U.S. In other cases, it can take several months for orders to arrive. Therefore, for certain orders, distributors must either delay shipments or risk being in non-compliance, which hurts their business.

Further, 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. DEA's response did not address our arguments and simply stated: “After careful consideration, the DEA has decided not to allow the shipment to proceed when the TIN is issued. As stated above prior to export or import a TIN has to be issued and importers and exporters have to wait the 15-day period.”

As an alternative to the recommendation above to remove the transaction identification number altogether, DEA should modify the rule to state that the import or export transaction of listed chemicals can proceed as soon as the transaction identification number has been issued, regardless of whether the 15-day reporting period has passed. This would allow listed chemicals to be treated the same as controlled substances.

NACD Recommendations

Businesses importing listed chemicals must already file the DEA 486 form to import or export these products and wait 15 days, which we do not dispute. However, the additional requirement of obtaining a transaction identification number to proceed with the transaction is unnecessary and costly, not only to business, but to government as well.

NACD recommends DEA remove the requirement of a transaction number altogether, which would solve the two issues listed above in one fell swoop. However, should DEA decide to keep the requirement of a transaction identification number, DEA should synchronize listed chemical and controlled substance import/export procedures by allowing both listed chemicals and controlled substances to proceed as soon as the transaction identification number has been issued regardless of whether the 15 days have passed since the regulatory filing.

NACD Comments to DEA Docket No. OLP 164

Conclusion

NACD appreciates DEA's efforts to update and revise regulations. We believe the recommendations outlined above would significantly reduce regulatory burden upon businesses.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer C. Gibson".

Jennifer C. Gibson
Vice President, Regulatory Affairs