

reasonable cause to believe that such a sale would result in the illegal manufacture of a controlled substance. This rulemaking codifies current practice established pursuant to statutory authority by which Federal agencies provide DEA with the opportunity to ensure that the sale of chemicals by them will not result in the illegal manufacture of controlled substances.

DATES: Written comments must be submitted on or before July 7, 2003.

ADDRESSES: Comments should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7297.

SUPPLEMENTARY INFORMATION:

What Does the National Defense Authorization Act Require Federal Agencies To Do Before They May Sell Certain Chemicals?

Section 520 of the National Defense Authorization Act (Pub. L. 104-201) amended the Controlled Substances Act (CSA) to prohibit a Federal department or agency from selling from its stocks any chemical which, as determined by the Administrator of DEA, could be used in the manufacture of a controlled substance. However, the CSA as amended permits sales of such chemicals if the Administrator of DEA certifies in writing to the head of the selling Federal department or agency that there is no reasonable cause to believe that the sale of the chemical would result in the illegal manufacture of a controlled substance (21 U.S.C. 890).

Why Is DEA Taking This Action?

Since enactment of the National Defense Authorization Act in July 1996, DEA has worked with Federal departments and agencies to ensure compliance. Now, DEA plans to codify in its regulations the current practice that has been established pursuant to this statutory authority and the experience that DEA has gained from implementing these provisions.

How Does This Regulation Impact Federal Departments or Agencies?

This rule simply requires that the Federal department or agency notify DEA of the names of prospective bidders and end-users prior to the sale of chemicals which could be used in the

manufacture of controlled substances. This notification will allow DEA to identify whether there is reasonable cause to believe that the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance. DEA will work with Federal departments and agencies to determine which chemicals could be used in the illicit manufacture of a controlled substance. To date, DEA has been contacted by only one Federal department or agency conducting sales of chemicals falling under the provisions of the Act, the Department of Defense (DOD). DEA has received the names of approximately fifty bidders and end-users from DOD and found, in every case, that there was no reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. Therefore, DEA has certified each bidder and end-user whose name has been submitted by DOD to DEA.

What Chemicals Are Affected By These Implementing Regulations?

These implementing regulations affect any chemical which DEA determines could be used in the illicit manufacture of a controlled substance. Chemicals that can be used in the manufacture of a controlled substance include, but are not limited to, all List I and List II chemicals as provided in 21 CFR 1310.02. Further, any chemicals mentioned in the DEA "Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Clandestine Production of Controlled Substances or Listed Chemicals" published, and updated from time to time, in the **Federal Register** (64 FR 25910, May 13, 1999; corrected at 64 FR 50541, Sept. 17, 1999) are affected by these regulations. Finally, any chemical which is neither a listed chemical nor is listed in the special surveillance list but which could be used in the illicit manufacture of a controlled substance is affected by these implementing regulations. Such chemicals could include, but are not limited to, those chemicals used in the direct illegal manufacture of a controlled substance, those chemicals used as cutting agents, and those chemicals used to process the controlled substance into a dosage form. DEA strongly recommends that any Federal department or agency considering the sale of any chemical from its stocks contact DEA to determine whether such chemical could be used in the illicit manufacture of a controlled substance

as far in advance of the sale of such chemical as possible.

What Do These Implementing Regulations Require?

DEA is proposing that a Federal department or agency notify the Administrator of DEA in writing at least 15 calendar days in advance of a proposed sale of chemicals covered by the Act. However, DEA strongly encourages Federal departments or agencies to notify it further in advance if possible.

By this rule, DEA is proposing that the written notification be submitted on official agency letterhead to the Drug Enforcement Administration, Office of Diversion Control, Domestic Chemical Control Unit (ODID) Washington, DC 20537 and include: (1) The name and amount of the chemical to be sold; (2) the name and address of the prospective bidder(s); (3) the name and address of the potential end-user(s), in cases where a sale is being brokered; (4) point(s) of contact for the prospective bidder and end-user; and (5) the end use of the chemical.

Within 15 calendar days from the date the written notification is received, DEA will respond in writing to the Federal department or agency certifying that there is, or is not, reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. The certification that there is no reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance will apply to future sales to the same prospective bidder and end-user for the same chemical for one calendar year unless DEA notifies the agency to the contrary in writing.

What Factors Will DEA Consider in Certifying a Bidder or End-User?

In determining whether there is reasonable cause to believe that the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance, the Administrator will consider the following factors: (1) The prospective bidder's and end-user's past experience in the maintenance of effective controls against diversion of particular chemicals into other than legitimate medical, scientific, and industrial channels; (2) the prospective bidder's and end-user's compliance with applicable state and local law; (3) the prior conviction record of the prospective bidder and end-user relating to controlled substances or to chemicals