

21 CFR 1301.26.

The 1998 amendments to the CSI&EA made by Congress added restrictions that are *in addition to* the foregoing requirements in the DEA regulations. These amendments are contained in 21 U.S.C. 956(a)(2). This subsection provides that, where a United States resident is returning to this country through a land border (*i.e.*, returning by land from Mexico or Canada), and such person seeks to bring into the country a controlled substance obtained abroad for personal medical use (not obtained pursuant to a prescription issued by a DEA registrant), such person may bring in no more than 50 dosage units of the controlled substance.

The rule proposed here would specify that the 50-dosage-unit limit mandated by Congress under 956(a)(2) applies to *the combined total of all controlled substances that the returning traveler seeks to import for personal medical use* (rather than up to 50 dosage units of each of a variety of controlled substances). [A dosage unit is considered by DEA to be the basic unit used to quantify the amount to be taken in normal usage (*i.e.*, tablet, capsule, milliliter, or teaspoon).] This limitation applies whether or not the controlled substances were obtained using a prescription issued by a DEA-registered practitioner.

The rule, as proposed here, would also be applied to all United States residents who return to the United States at any location and by any means (not just travelers returning to the United States through a land border with Canada or Mexico). The United States Customs Service has advised DEA that it would be beneficial to have the rule written in a manner that is applied uniformly at all United States border checkpoints.

#### **Does the 50-Dosage-Unit Limit Mean That a Returning Traveler May Bring Into the United States Up to 50 Dosage Units of Controlled Substances “No Questions Asked”?**

Many persons appear to be under the mistaken impression that Congress's 1998 amendment to 21 U.S.C. 956 was intended to allow United States residents to travel to Mexico or Canada, purchase controlled substances, then return to the United States with up to 50 dosage units “no questions asked.” It is DEA's intention, through this publication, to end any such misconceptions. In 1998 Congress placed a *limit* of 50 dosage units on the amount of a controlled substance that may be imported by United States residents entering from Mexico or

Canada; Congress did not eliminate any of the existing requirements established by DEA in its regulation governing personal use importation (21 CFR 1301.26). It remains true that *all persons who wish to import controlled substances for personal medical use may do so only for legitimate personal medical use and must satisfy all of the requirements in 21 CFR 1301.26*. The requirements found in § 1301.26 are necessary to ensure that the drugs possessed by the traveler will actually be used by the traveler for legitimate personal medical use; Congress had no intention of eliminating these appropriate safeguards against diversion.

In all instances, if there is evidence that the traveler is attempting to bring into the United States controlled substances (in any amount) for other than legitimate personal medical use, the importation does not comport with either the statute (21 U.S.C. 956) or the DEA regulation (21 CFR 1301.26) and must be disallowed. The Customs official should, of course, take into account all facts and circumstances of a particular case in determining whether the traveler is attempting to bring in controlled substances for legitimate personal medical use or attempting to do so in order to divert the drugs for illicit use. Though neither dispositive nor exhaustive, the following factors may, depending on the circumstances, be indicative of diversion: (i) The same traveler has made repeated attempts over a short period of time to import controlled substances for claimed personal medical use; (ii) the traveler is carrying a variety of different controlled substances that are either contraindicated or in a combination that is commonly used by drug abusers.

#### **Does the 50-Dosage-Unit Limit Apply to Foreign Travelers?**

By its express terms, Congress's 1998 amendment, which imposed the 50-dosage-unit limit, applies only to United States residents; it does *not* apply to foreign travelers entering the United States. Likewise, the DEA regulation proposed here will apply only to United States residents.

Having made this distinction, it must be emphasized that all travelers—United States residents or non-United States residents—may only import (or export) controlled substances for *legitimate personal medical use* and must comply fully with all of the current provisions of 21 CFR 1301.26.

#### **How Does the Combined 50-Dosage-Unit Limit Contained in the Proposed Rule Comport With Congress's 1998 Amendment to the CSI&EA?**

On its face, the 1998 amendment to the CSI&EA (contained in 21 U.S.C. 956(a)(2)) does not mandate that United States residents be allowed to bring into the United States 50 dosage units of each of a variety of controlled substances purchased abroad. Rather, 50 dosage units is the *maximum* amount of a controlled substance that DEA may permit, through regulation, to be imported for personal medical use without a prescription. As explained above, Congress in 1998 was responding to the exploitation of the personal use allowance by persons seeking to divert controlled substances. Congress recognized that DEA would continue to monitor the situation and, if necessary, modify its regulation to impose tighter controls. As Senator Leahy stated during consideration of the bill:

Such abuses have increased dramatically in recent years, and there is a need to address this problem now. [The 1998 amendment] does this by limiting the personal use exemption in certain circumstances to 50 dosage units. But this is only a stopgap measure. What constitutes “personal use” is a complicated issue that will turn on a number of circumstances, including the nature of the controlled substance and the medical needs of the individual. It is the sort of issue that should be addressed not through single-standard legislation but through measured regulations passed by an agency with the expertise in this matter. For this reason, \* \* \* I [will] direct the Department of Justice to study the problems at our borders and to pass regulations that are more finely tuned to address those problems.

144 Cong. Rec. S 12680–04, 12681 (October 20, 1998).

Indeed, recently obtained information indicates that the misuse of the personal use importation allowance persists even after the 1998 amendment by Congress. Thus, revising the DEA regulations such that the 50-dosage-unit limit enacted by Congress applies to the combined total of all controlled substances in the traveler's possession is a necessary and appropriate step to further curtail the misuse of the personal use importation exception. DEA will continue to monitor the situation to determine whether future revisions to the regulation are needed to maintain adequate safeguards against diversion.

#### **What Is the Meaning of “Lawfully Obtained” In the Context of Personal Use Importation?**

Both the statute (21 U.S.C. 956) and the DEA regulation (21 CFR 1301.26) allow personal use importation only