

monthly statement of various credit card issuing companies a number of consumer products, including the "Auto Starter." The "Auto Starter" is a portable "lighter-to-lighter" automobile battery charger, a device designed to be used to recharge the battery in a disabled vehicle by connection to an operating vehicle through the cigarette lighter receptacles of both vehicles.

The complaint charges that Cooper Rand expressly misrepresented that lighter-to-lighter charges can or will restart a vehicle disabled by a discharged battery "instantly" and as quickly as jumper cables. The complaint alleges that this is deceptive and in violation of section 5 of the Federal Trade Commission Act because lighter-to-lighter charges take significantly longer than jumper cables to restart a vehicle, even under the most favorable circumstances, and lighter-to-lighter charges cannot restart a vehicle disabled by a discharged battery instantly.

The complaint also alleges that Cooper Rand expressly misrepresented that illumination of the lighter-to-lighter charger's power monitor light indicates that the disabled vehicle is ready to start. The complaint alleges that this is deceptive and in violation of section 5 of the Federal Trade Commission Act because illumination of the lighter-to-lighter charger's power monitor light is not an accurate indicator that a disabled vehicle is ready to start.

In addition, the complaint charges that Cooper Rand claimed that it had a reasonable basis for its claims that lighter-to-lighter charges can or will restart a vehicle disabled by a discharged battery "instantly" and as quickly as jumper cables. The complaint alleges that this misrepresentation by Cooper Rand was deceptive and in violation of section 5 of the Federal Trade Commission Act.

Part I of the proposed consent order would prohibit Cooper Rand from representing that its lighter-to-lighter charges can or will restart a vehicle disabled by a discharged battery "instantly" or as quickly as jumper cables, and would prohibit Cooper Rand from making any performance claims for these without possessing and relying upon a reasonable basis for those claims at the time they are made.

Part II of the proposed consent order would require Cooper Rand to disclose, in solicitations for future sales of its lighter-to-lighter chargers, on a hang tag affixed to the product, and in the product instruction insert, *either*: The specific length of time required to recharge a battery in a given state of discharge and whether the specified

time is a maximum, minimum, typical, or other such time, and that older batteries or colder temperatures may increase charging time; *or*: that lighter-to-lighter chargers, unlike jumper cables, will not instantly restart a vehicle; that lighter-to-lighter chargers must recharge a battery before the vehicle can be restarted; and that older batteries and colder temperatures may significantly increase the amount of time needed to restart a vehicle with a lighter-to-lighter charger.

Part III of the proposed consent order would require Cooper Rand to send past purchasers of lighter-to-lighter chargers a corrective notice disclosing that lighter-to-lighter chargers, unlike jumper cables, will not instantly restart a vehicle; that lighter-to-lighter chargers must recharge a battery before the vehicle can be restarted; and that older batteries and colder temperatures may significantly increase the amount of time needed to restart a vehicle with a lighter-to-lighter charger.

Part IV of the proposed consent order would require Cooper Rand to distribute copies of the order to all of its officers, employees, and other agents. Part V of the proposed consent order would require Cooper Rand to retain for three years and make available to the Commission the names and addresses of persons to whom the required corrective notice is sent. Part VI would require Cooper Rand to retain and make available to the Commission certain other records, including any materials relied upon to substantiate any representation, and any test reports, studies, data or other materials that qualify or call into question any such representation or the basis upon which Cooper Rand relies for such representation. Part VII of the proposed consent order would require Cooper Rand to notify the Commission of any change in its corporate structure that might affect compliance obligations arising out of the order. Finally, Part VIII would require Cooper Rand to file a report within ninety (90) days after the order is served setting forth the manner and form of its compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed consent order; it is not intended to constitute an official interpretation of the agreement and proposed consent order, or to modify their terms in any way.

Donald S. Clark,

*Secretary.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Parts 1310 and 1313

#### Records, Reports, Imports, and Exports of Precursor and Essential Chemicals, Tableting Machines, and Encapsulating Machines

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule outlines procedures designed to implement the regulatory requirements set forth in the Chemical Diversion and Trafficking Act of 1988. The proposal contains the requirements for the recordkeeping, reporting, importing, and exporting of precursor and essential chemicals, and recordkeeping and reporting on tableting machines and encapsulating machines.

**DATE:** Written comments and objections must be received on or before March 27, 1989.

**ADDRESSES:** Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone (202) 633-1216.

**SUPPLEMENTARY INFORMATION:** The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100-690) requires that any person who distributes, imports, or exports certain precursor and essential chemicals identify their customers, maintain retrievable records for a specified period of time, report suspicious or unusual orders, and provide advanced notification of imports and exports. The requirements for maintaining records and reporting suspicious or unusual orders also applies for tableting machines, and encapsulating machines. The Act further provides that the Attorney General has the authority to suspend imports and exports if he determines that such shipments may be diverted to the clandestine manufacture of a controlled substance.

When the rule is finalized, the Piperidine Report (DEA Form 420), OMB approval 1117-0017, will be eliminated.

The Administrator of the Drug Enforcement Administration hereby certifies that this proposed rule will

have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291 this proposed rule has been submitted for review to the Office of Management and the Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects

##### 21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

##### 21 CFR Part 1313

Drug traffic control, Exports, Imports, Reporting requirements.

For reasons set out above, Chapter II, Title 21, Code of Federal Regulations is proposed to be amended as follows:

1. Part 1310 is proposed to be revised to read as follows:

### PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

#### Sec.

- 1310.1 Definitions.
- 1310.2 Substances covered.
- 1310.3 Persons required to keep records and file reports.
- 1310.4 Maintenance of records.
- 1310.5 Reports.
- 1310.6 Content of records and reports.
- 1310.7 Proof of identity.

Authority: 21 U.S.C. 802, 830, 871(b).

#### § 1310.1 Definitions.

As used in this part, the following terms shall have the meanings specified:

- (a) The term "Act" means the Controlled Substances Act, as amended (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act, as amended (84 Stat. 1285; 21 U.S.C. 951).
- (b) The term "listed chemical" means any listed precursor chemical or listed essential chemical.
- (c) The term "listed precursor chemical" means a chemical specifically designated by the Administrator in § 1310.2(a) that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of this title and is critical to the creation of a controlled substance.
- (d) The term "listed essential chemical" means a chemical specifically

designated by the Administrator in § 1310.2(b) that, in addition to legitimate uses, is used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this title.

(e) The term "regulated person" means a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine.

(f) The term "regulated transaction" means:

(1) A distribution, receipt, sale, importation or exportation of a threshold amount as determined by the Administration which includes a cumulative threshold amount for multiple transactions of a listed chemical, except that such term does not include:

(i) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means under the direct management and control of the regulated person;

(ii) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with this section;

(iii) Any category of transaction specified by regulation of the Administration as excluded from this definition as unnecessary for enforcement of this title or title III;

(iv) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or

(v) Any transaction in a chemical mixture.

(2) A distribution, importation, or exportation of a tableting machine or encapsulating machine.

(g) The term "chemical mixture" means a combination of two or more chemical substances, at least one of which is not a listed precursor chemical or listed essential chemical, except that such term does not include any combination of a listed precursor chemical or a listed essential chemical with another chemical that is present solely as an impurity or which has been created to evade the requirements of the Act.

(h) The term "retrievable" means that records required by this section are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be readily retrieved and separated out from all other records in a reasonable time and/or records are kept on which the listed chemicals, tableting machines, and encapsulating machines are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records or are maintained separate from all other records.

(i) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act (21 U.S.C. 802 and 951) and § 1301.2 of this chapter.

#### § 1310.2 Substances covered.

The following chemicals have been specifically designated by the Administrator of the Drug Enforcement Administration as the listed chemicals subject to the provisions of this section and Part 1313.

- (a) Listed Precursor Chemicals:
  - (1) Anthranilic acid and its salts.
  - (2) Benzyl cyanide.
  - (3) Ephedrine, its salts, optical isomers, and salts of optical isomers.
  - (4) Ergonovine and its salts.
  - (5) Ergotamine and its salts.
  - (6) N-Acetylanthranilic acid and its salts.
  - (7) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
  - (8) Phenylacetic acid and its salts.
  - (9) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.
  - (10) Piperidine and its salts.
  - (11) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.
  - (12) 3,4-Methylenedioxyphenyl-2-propanone.
- (b) Listed Essential Chemicals:
  - (1) Acetic anhydride.
  - (2) Acetone.
  - (3) Benzyl chloride.
  - (4) Ethyl ether.
  - (5) Hydriodic acid.
  - (6) Potassium permanganate.
  - (7) 2-Butanone (or Methyl Ethyl Ketone or MEK).
  - (8) Toluene.
- (c) The Administrator may add or delete a substance as a listed chemical by publishing a final rule in the Federal Register following a proposal which shall be published at least 30 days prior to the final rule.
- (d) Any person may petition the Administrator to have any substance

added or deleted from paragraphs (a) or (b) of this section.

(e) Any petition under this section shall contain the following information:

- (1) The name and address of the petitioner;
- (2) The name of the chemical to which the petition pertains;
- (3) The name and address of the manufacturer(s) of the chemical (if known);
- (4) A complete statement of the facts which the petitioner believes justifies the addition or deletion of the substance from paragraphs (a) or (b) of this section;
- (5) The date of the petition.

(f) The Administrator may require the petitioner to submit such documents or written statements of fact relevant to the petition as he deems necessary in making a determination.

(g) Within a reasonable period of time after the receipt of the petition, the Administrator shall notify the petitioner of his decision and the reason therefor. The Administrator need not accept a petition if any of the requirements prescribed in paragraph (e) of this section or requested pursuant to paragraph (f) of this section are lacking or are not clearly set forth as to be readily understood. If the petitioner desires, he may amend and resubmit the petition to meet the requirements of paragraphs (e) and (f) of this section.

(h) If a petition is granted or the Administrator, upon his own motion, adds or deletes substances as listed chemicals as set forth in paragraph (c) of this section, he shall issue and publish in the **Federal Register** a proposal to add or delete a substance as a listed chemical. The Administrator shall permit any interested person to file written comments regarding the proposal within 30 days of the date of publication of his order in the **Federal Register**. The Administrator will consider any comments filed by interested persons and publish a final rule in accordance with his decision in the matter.

**§ 1310.3 Persons required to keep records and file reports.**

Each regulated person who engages in a regulated transaction involving a listed chemical, a tableting machine, or an encapsulating machine shall keep a record of the transaction and file reports as specified by § 1310.4.

**§ 1310.4 Maintenance of records.**

(a) Every record required to be kept subject to § 1310.3 for a listed precursor chemical, a tableting machine, or an encapsulating machine shall be kept by the regulated person for four years after the date of the transaction.

(b) Every record required to be kept subject to § 1310.3 for a listed essential chemical shall be kept by the regulated person for two years after the date of the transaction.

(c) A record under this section shall be kept at the principal place of business or other location which is provided in writing to the Special Agent in Charge of the Administration in the nearest office of the Drug Enforcement Administration and shall be readily retrievable and available for inspection and copying by authorized employees of the Administration under the provisions of 21 U.S.C. 880.

**§ 1310.5 Reports.**

(a) Each regulated person shall report to the nearest office of the Drug Enforcement Administration, as follows:

(1) Any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part.

(2) Any proposed regulated transaction with a person whose description or other identifying characteristic the Administration has previously furnished to the regulated person.

(3) Any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person.

(4) Any domestic regulated

transaction in a tableting machine or an encapsulating machine.

(b) Each report submitted pursuant to paragraph (a) of this section shall, whenever possible, be made orally to the nearest office of the Administration at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved and as much in advance of the conclusion of the transaction as possible. Written reports of transactions listed in paragraphs (a)(1), (a)(3) and (a)(4) of this section will subsequently be filed as set forth in § 1310.6. A transaction may not be completed with a person whose description or identifying characteristic has previously been furnished to the regulated person by the Administration unless the transaction is approved by the Administration.

(c) The quantitative threshold to be utilized in determining whether a receipt, sale, importation or exportation is a regulated transaction or the cumulative amount for multiple transactions within a thirty day period which would be reportable under this section are as follows:

(1) Listed Precursor Chemicals:

Chemical	Base weight
(i) Anthranilic acid and its salts.....	30 kilograms.
(ii) Benzyl cyanide.....	1 kilogram.
(iii) Ephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(iv) Ergonovine and its salts.....	10 grams.
(v) Ergotamine and its salts.....	20 grams.
(vi) N-Acetylanthranilic acid and its salts.	40 kilograms.
(vii) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.	2.5 kilograms.
(viii) Phenylacetic acid and its salts.	1 kilogram.
(ix) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.	2.5 kilograms.
(x) Piperidine and its salts.....	500 grams.
(xi) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.	1 kilogram.
(xii) 3,4-Methylenedioxyphenyl-2-propanone.	20 kilograms.

(2) Listed Essential Chemicals:

(i) Imports and Exports

Chemical	By volume	By weight of chemical
(A) Acetic anhydride.....	250 gallons.....	1,023 kilograms.
(B) Acetone.....	500 gallons.....	1,500 kilograms.
(C) Benzyl chloride.....	N/A.....	4 kilograms
(D) Ethyl ether.....	500 gallons.....	1,364 kilograms
(E) Hydriodic acid.....	40 liters (57%).....	22.8 kilograms.
(F) Potassium permanganate.....	N/A.....	500 kilograms.
(G) 2-Butanone (MEK).....	500 gallons.....	1,455 kilograms
(H) Toluene.....	500 gallons.....	1,591 kilograms.

(ii) Domestic Sales

Chemical	By volume	By weight of chemical
(A) Acetic anhydride.....	250 gallons.....	1,023 kilograms.
(B) Acetone.....	50 gallons.....	150 kilograms.
(C) Benzyl chloride.....	N/A.....	1 kilogram.
(D) Ethyl ether.....	50 gallons.....	135.8 kilograms.
(E) Hydriodic acid.....	10 liters (57%).....	5.7 kilograms.
(F) Potassium permanganate.....	N/A.....	55 kilograms.
(G) 2-Butanone (MEK).....	50 gallons.....	145 kilograms.
(H) Toluene.....	50 gallons.....	159 kilograms.

(iii) The cumulative threshold is not applicable to domestic sales of Acetone, 2-Butanone (MEK), and Toluene.

§ 1310.6 Content of records and reports.

(a) Each record and/or report required by §§ 1310.3-1310.5 shall include the following:

(1) The name, address, and telephone number of each party to the regulated transaction.

(2) The date of the regulated transaction.

(3) The name, quantity and form of packaging of the listed chemical or a description of the tableting machine or encapsulating machine (including make, model and serial number).

(4) The method of transfer (company truck, picked up by customer, etc.).

(5) The type of identification used by the purchaser and any unique number on that identification.

(b) If a report is submitted pursuant to § 1310.5 (a)(1) or

(a)(3), the report must also include a description of the circumstances leading the regulated person to make the report, such as the reason that the method of payment was uncommon or the loss unusual. If the report is a loss or disappearance under § 1310.5(a)(3), the circumstances of such loss must be provided (in-transit, theft from premises, etc.).

(c) For purposes of this section, normal business records shall be considered adequate if they contain the information listed in paragraph (a) of this section, and are retrievable from other business records of the regulated person.

(d) A suggested format for the reports is provided below:

Supplier:  
 Name \_\_\_\_\_  
 Business Address \_\_\_\_\_  
 City \_\_\_\_\_  
 State \_\_\_\_\_  
 Zip \_\_\_\_\_  
 Business Phone \_\_\_\_\_  
 Purchaser:  
 Name \_\_\_\_\_  
 Business Address \_\_\_\_\_  
 City \_\_\_\_\_  
 State \_\_\_\_\_  
 Zip \_\_\_\_\_  
 Business Phone \_\_\_\_\_  
 Identification \_\_\_\_\_

Shipping Address (if different than purchaser address):

Street \_\_\_\_\_  
 City \_\_\_\_\_  
 State \_\_\_\_\_  
 Zip \_\_\_\_\_  
 Date of Shipment \_\_\_\_\_  
 Name of Listed Chemical(s) \_\_\_\_\_  
 Quantity and Form of Packaging \_\_\_\_\_  
 Description of Machine:  
 Make: \_\_\_\_\_  
 Model: \_\_\_\_\_  
 Serial # \_\_\_\_\_  
 Method of Transfer \_\_\_\_\_  
 If Loss or Disappearance:  
 Date of Loss \_\_\_\_\_  
 Type of Loss \_\_\_\_\_

Public reporting burden for this collection of information is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Drug Enforcement Administration, Records Management Section, Washington, DC 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117-xxxx, Washington, DC 20503.

§ 1310.7 Proof of identity.

Each regulated person who engages in a regulated transaction must identify the other party to the transaction. This should be accomplished by having the purchaser present some document which would verify the identity of the purchaser to the regulated person. The type of documents and other evidence of proof must consist of at least purchase documents and signature of the purchaser or the purchaser's agent in the case of business entities or a drivers license and other identification for sales to individuals or cash purchasers. When transacting business with a new representative of a firm, the regulated person must verify the agency of the representative. The regulated person should attempt to verify the existence of a business entity if the regulated person is not familiar with that business or has some reason to question the validity of

the business. This may be accomplished by such methods as checking the telephone directory, the local credit bureau, the local Chamber of Commerce or the local Better Business Bureau.

2. A new Part 1313 is proposed to be added to read as follows:

**PART 1313—IMPORTATION AND EXPORTATION OF PRECURSORS AND ESSENTIAL CHEMICALS**

- Sec.
- 1313.1 Scope.
- 1313.2 Definitions.

**Importation of Precursors and Essential Chemicals**

- 1313.12 Requirement of authorization to import.
- 1313.13 Contents of import declaration.
- 1313.14 Distribution of import declaration.
- 1313.15 Waiver of 15-day advance notice for chemical importers.

**Exportation of Precursors and Essential Chemicals**

- 1313.21 Requirement of authorization to export.
- 1313.22 Contents of export declaration.
- 1313.23 Distribution of export declaration.
- 1313.24 Waiver of 15-day advance notice for chemical exporters.

**Transshipment and In-Transit shipment of Precursors and Essential Chemicals**

- 1313.31 Advance notice of importation for transshipment or transfer.
- 1313.41 Suspension of shipments.

**Hearings**

- 1313.51 Hearings generally.
- 1313.52 Purpose of hearing.
- 1313.53 Waiver of modification of rules.
- 1313.54 Request for hearing.
- 1313.55 Burden of proof.
- 1313.56 Time and place of hearing.
- 1313.57 Final order.

Authority: 21 U.S.C. 802, 830, 871(b), 971.

§ 1313.1 Scope.

Procedures governing the importation, exportation, transshipment and intranet shipment of precursors and essential chemicals pursuant to section 1018 of the Act (21 U.S.C. 971) are governed generally by those sections and specifically by the sections of this part.

**§ 1313.2 Definitions.**

As used in this part, the following terms shall have the meanings specified:

(a) The term "chemical export" means with respect to a listed chemical or chemicals, any taking out or removal of such article from the jurisdiction of the United States (whether or not such taking out or removal constitutes an exportation within the meaning of the Customs and related laws of the United States) that is not in conflict with the laws of the country to which it is intended for import.

(b) The term "chemical exporter" includes every regulated person who exports, or who acts as an export broker or forwarding agent for a chemical export. In the event that the broker or forwarding agent does not take title or possession of the chemical export, such broker or forwarding agent will not be considered a chemical exporter for purposes of Part 1313 unless the chemical exporter and the broker or forwarding agent have reached an agreement of which the Administrator has been informed in writing at the earliest possible time that specifies which of the two parties will be responsible for the filing of the Precursor and Essential Chemical Import/Export Declaration (DEA form 486) notifying the Administrator of each chemical export.

(c) The term "chemical import" means, with respect to a listed chemical, any bringing in or introduction of such article into either the jurisdiction of the United States or the Customs territory of the United States, and from the jurisdiction of the United States into the Customs territory of the United States (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(d) The term "chemical importer" includes every regulated person who imports, or who acts as an import broker or forwarding agent for a chemical import. In the event that the broker or forwarding agent does not take title to or possession of the chemical import, such broker or forwarding agent will not be considered a chemical importer for purposes of Part 1313 unless the chemical importer and the broker or forwarding agent have reached an agreement of which the Administrator has been informed in writing at the earliest possible time that specifies which of the two parties will be responsible for the filing of the Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) notifying the Administrator of each chemical import.

(e) The term "regular customer"

means a person with whom the regulated person has an established business relationship for a specified listed chemical or chemicals that is reported to and accepted by the Administration.

(f) The term "regular supplier" means a supplier with whom the regulated person has an established business relationship that is reported to the Administration.

(g) The term "Customs territory of the United States" means the several states, the District of Columbia, and Puerto Rico.

(h) The term "jurisdiction of the United States" means the Customs territory of the United States, the Virgin Islands, the Canal Zone, Guam, American Samoa, and Palau.

(i) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act (21 U.S.C. 802 and 951) and § 1301.2 of this chapter.

**Importation of Precursors and Essential Chemicals****§ 1313.12 Requirement of authorization to import.**

(a) No person shall import or cause to be imported any chemical listed in § 1310.2 which meets or exceeds the threshold quantities identified in § 1310.5, until such time a DEA Form 486 has been filed with the Administrator.

(b) A DEA Form 486 must be furnished to the Drug Enforcement Administration, Drug Control Section, P.O. Box (to be designated), for all regulated, chemical import transactions. However, the 15-day advance notification requirement found in § 1313.13 is waived for chemical importers who have completed the requirements of § 1313.15. The DEA Form 486 must be provided in this instance on or before the date of importation.

**§ 1313.13 Contents of import declaration**

(a) Any precursor or essential chemical listed in § 1310.2 may be imported if that chemical is necessary for medical, commercial, scientific, or other legitimate uses within the United States. Chemical importations into the United States for immediate transfer/transshipment outside the United States must comply with the procedures outlined in § 1313.31.

(b) Any regulated person who desires to import a threshold or greater quantity of a listed chemical must furnish the Drug Enforcement Administration, Drug Control Section, P. O. Box (to be designated), with a completed DEA Form 486 at least 15 days prior to the date of importation and distribute four copies of this form as directed in § 1313.14.

(c) The DEA Form 486 must be executed in quintuplicate and will include the following information:

(1) The name, address, telephone and telex numbers of the regulated, chemical importer, the name, address, and telephone and numbers of the broker or forwarding agent (if any); and

(2) The complete name and description of each listed chemical to be imported, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof; and the gross weight of the shipment given in kilograms or parts thereof; and

(3) The proposed import date, the foreign port of exportation to the United States, and the first U.S. Customs Port of Entry; and

(4) The name, address, telephone number, and telex number (if known) of the consignor in the foreign country of exportation, the name(s) and address(es) of any intermediate consignor(s), and any license numbers if the consignor is required to have such numbers by the country of exportation.

**§ 1313.14 Distribution of import declaration.**

The required five copies of the precursor and essential chemical import declaration (DEA Form 486) will be distributed as follows:

(a) Copy 1, Copy 2, and Copy 3 shall be transmitted to the foreign shipper. The foreign shipper will submit Copy 1 to the proper governmental authority in the foreign country, if required as a prerequisite to export authorization. Copy 1 will then accompany the shipment to its destination, and shall be retained on file by the chemical importer. Copy 2 will accompany the shipment and be available for use by the appropriate customs official of the exporting country. Copy 3 shall accompany the shipment and be available for inspection and removal by an official of the U.S. Customs at the time of entry.

(b) Copy 4 shall be forwarded within the time limit specified in § 1313.13(b), directly to the Drug Enforcement Administration, Drug Control Section, Import/Export Unit, P.O. Box (to be designated).

(c) Copy 5 shall be retained on file by the regulated person as the record of authorization to import. Import declaration forms involving a listed precursor chemical must be retained for four years; declaration forms for listed essential chemicals must be retained for two years.

**§ 1313.15 Waiver of 15-day advance notice for chemical importers.**

(a) The Administrator shall determine whether a chemical importer shall be exempt from the 15-day advance notice requirement for filing the Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) required by § 1313.13 for importations from regular suppliers.

(b) The Administrator shall grant regular suppliers status to the supplier or suppliers of a chemical importer if the Administrator determines that:

(1) The current supplier or suppliers submitted for consideration under paragraph (c) of this section has an established business relationship with the chemical importer; and

(2) The chemical imports are to be used for legitimate medical, scientific or commercial reasons, and are being received from a regular supplier.

(c) The Administrator shall consider the following factors in making a determination:

(1) The name and location of the chemical importer;

(2) The nature of the chemical importer's business (i.e., importer, exporter, broker, forwarding agent, distributor, manufacturer, etc.);

(3) The listed chemical or chemicals imported by the chemical importer and the use to which the listed chemical or chemicals will be applied;

(4) The names, street addresses, and telephone and telex numbers of the customers of the chemical importer to whom chemical imports are supplied;

(5) The names, street addresses, and telephone and telex numbers of the chemical importer's suppliers;

(6) The frequency and number of import transactions of a listed chemical or chemicals occurring in the preceding two year period;

(7) The method of delivery (direct shipment or through a broker or forwarding agent); and

(8) Any other information submitted by the chemical importer that may be considered relevant.

(d) The chemical importer should submit the information listed in paragraph (c) of this section, as well as the street address, name of a contact person and telephone number of that person to the Administrator in order that a determination be made as to whether the 15-day advance notice requirement should be waived.

(e) The information submitted must be received by the Administrator not later than 30 days after the publication of the final order pertaining to Part 1313 and shall be sent to the Drug Enforcement Administration, Office of Diversion Control, P.O. Box (to be designated),

(f) If upon the filing of a declaration for a chemical shipment from a supplier who has not been determined by the Administrator to be a regular supplier pursuant to paragraph (b) of this section and if upon the expiration of the 15-day advance notice the Administrator has not notified the chemical importer in writing to the contrary, the supplier will automatically become a regular supplier for purposes of this section.

(g) In the event that the chemical importer should relocate, change ownership, import listed chemicals which were not previously imported, or add a new customer, the chemical importer shall advise the Administrator of the appropriate changes. The Administrator shall make a new determination on the waiver of the 15-day advance notice requirement upon evaluating the new information.

(h) All chemical importers shall be required to file a DEA Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) as required by § 1313.13 for all chemical imports.

(i) The Administrator may determine that a chemical importer who has been granted an exemption under this section for specific regular suppliers is no longer entitled to the waiver of the 15-day advance notice requirement if the Administrator determines that the chemical importer has:

(1) Failed to provide notification of shipments as required by 1313.13;

(2) Failed to comply with the requirements of paragraph (g) of this section;

(3) Engaged in activities in violation of the Act; or

(4) Diverted or aided in the diversion of imported chemicals to the clandestine manufacturer of an illicit controlled substance.

(j) The chemical importer will be notified in writing by the Administrator if such waiver is rescinded and the reasons for such action.

**Exportation of Precursors and Essential Chemicals****§ 1313.21 Requirement of authorization to export.**

(a) No person shall export or cause to be exported from the United States any chemical listed in § 1310.2, which meets or exceeds the threshold quantities identified in § 1310.5, until such time a DEA Form 486 has been filed with the Administrator.

(b) No person shall export or cause to be exported any listed chemical which is in violation of the law of the country to which the listed chemical is exported.

(c) A DEA Form 486 must be furnished to the Drug Enforcement Administration,

Drug Control Section, P.O. Box (to be designated) for all regulated, chemical export transactions. However, the 15-day advance notification requirement found in § 1313.22 is waived for chemical exporters who have satisfied the "regular customer" considerations of § 1313.24.

**§ 1313.22 Contents of export declaration.**

(a) Any precursor or essential chemical listed in § 1310.2 which meets or exceeds the quantitative threshold criteria established in § 1310.5 may be exported if that chemical is needed for medical, commercial, scientific, or other legitimate uses.

(b) Any regulated person authorized to export and desiring to export a threshold or greater quantity of a listed chemical must complete a DEA Form 486 which must be received by the Drug Enforcement Administration at least 15 days prior to the date of exportation and distribute four copies of the form as directed in § 1313.23.

(c) The DEA Form 486 must be executed in quintuplicate and will include the following information:

(1) The name, address, and telephone and telex numbers of the regulated, chemical exporter, and the name, address, and telephone number of the exporter broker, if any;

(2) A complete description of the listed chemical to be exported, the size or weight of container, the number of containers, the net weight of each listed chemical given in kilograms or parts thereof; and the gross weight of the shipment given in kilograms or parts thereof;

(3) The proposed export date, the U.S. Customs port of exportation, and the foreign port of entry; and

(4) The name, address, telephone number and telex number (if known) of the consignee in the country of destination, the name(s) and address(es) of any intermediate consignee(s), and any license numbers if the consignee is required to have such numbers by the country of importation.

(d) Notwithstanding the time limitations included in paragraph (b) of this section, a regulated person may receive a waiver of the 15-day advance notification requirement following the procedures outlined in § 1313.24.

(e) Declared exports of listed chemicals which are refused, rejected, or otherwise deemed undeliverable may be returned to the U.S. exporter upon receiving written authorization by the Drug Enforcement Administration. The regulated person must first forward a completed import declaration with a

letter detailing the circumstances of the return.

**§ 1313.23 Distribution of export declaration**

The required five copies of the precursor and essential chemical export declaration (DEA Form 486) will be distributed as follows:

(a) Copy 1 shall accompany the shipment and remain with the shipment to its destination.

(b) Copy 2 shall accompany the shipment and will be available for use by the appropriate customs official at the foreign country of destination.

(c) Copy 3 shall accompany the shipment and will be attached to the "Dock Receipt" and made available for inspection by U.S. Customs prior to export. Copy 3 shall be available for inspection and removal of an official of the U.S. Customs Service at the port of exportation.

(d) Copy 4 shall be forwarded, within the time limit required in § 1313.22 of this part, directly to the Drug Enforcement Administration, Drug Control Section, P.O. Box (to be designated).

(e) Copy 5 shall be retained by the chemical exporter on file as his record of authority for the exportation. Export declaration forms involving a precursor chemical must be retained for four years; export declarations for essential chemicals must be retained for two years.

**§ 1313.24 Waiver of 15-Day Advance notice for chemical exporters.**

(a) The Administrator shall determine whether a chemical exporter shall be exempt from the 15-day advance notice requirement for filing the Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) required by § 1313.21 for exportations to regular customers.

(b) The Administrator shall grant regular customer status to the customer or customers of a chemical exporter if:

(1) The Administrator determines that the current customer or customers submitted for consideration under paragraph (d) of this section have an established business relationship with the chemical exporter; or

(2) Upon the filing of a declaration for a chemical shipment to a customer who has not been determined by the Administrator to be a regular customer pursuant to paragraph (c) of this section and if upon the expiration of the 15-day advance notice the Administrator has not notified the chemical exporter in writing to the contrary, the customer will automatically become a regular customer for purposes of this section.

(c) Each chemical exporter whose customer becomes a regular customer as a result of the conditions mentioned in paragraph (b)(2) of this section shall be exempt from the 15-day advance notice requirement for exportations with that customer occurring pursuant to § 1313.21; however, the chemical exporter must ensure that a declaration has been forwarded to the Administrator not later than the date of shipment for all future shipments to the regular customer.

(d) The Administrator shall determine if the chemical exporter and a customer have a bona fide established business relationship upon evaluating the information provided by the chemical exporter to the Administrator. To facilitate the determination of this section regarding the status of a chemical exporter's regular customer or customers, each chemical exporter as defined in § 1313.2 shall provide the Administrator with a list of each customer who is a purchaser of a listed chemical or chemical who has an active, established business relationship with the chemical exporter regarding a listed chemical or chemicals which includes a history of previous purchases. The list shall be provided not later than 30 days after the publication of the regulations pertaining to Part 1313 and shall be sent to the Drug Enforcement Administration, Office of Diversion Control, P.O. Box (to be designated). It shall include the following information:

(1) The name and street address of the chemical exporter and of each regular customer;

(2) The telephone and telex number and contact person for the chemical exporter and for each regular customer;

(3) The nature of the regular customer's business (i.e., importer, exporter, broker, distributor, manufacturer, etc.) and use to which the listed chemical or chemicals will be applied;

(4) The duration of the business relationship;

(5) The frequency and number of transactions occurring during the preceding two year period;

(6) The amounts and the listed chemical or chemicals involved in regulated transactions between the chemical exporter and the regular customer;

(7) The method of delivery (direct shipment or through a broker or forwarding agent); and

(8) Any other information submitted by the chemical exporter that the exporter considers relevant for determining whether a customer is a regular customer.

(e) Unless notified in writing to the contrary, each chemical export to a regular customer submitted for consideration under paragraph (d) of this section who is determined by the Administrator to have a bona fide established business relationship with the chemical exporter shall be exempt from the 15-day advance notice requirement for exportations occurring pursuant to § 1313.21.

(f) In the event that the chemical exporter or the regular customer should relocate, change ownership, add a listed chemical or chemicals destined for exportation, or should any other significant factor contained in the original submission under § 1313.24(d) change, the chemical exporter shall advise the Administrator of the appropriate changes. Upon evaluating the new information, the Administrator shall make a new determination on the status of the regular customer.

(g) Chemical exporters shall file the DEA Precursor and Essential Chemical Import/Export Declaration (DEA Form 486) required in § 1313.21 for each chemical export of a threshold or greater amount of a listed chemical or chemicals to a regular customer. The declaration must be forwarded to the Administrator not later than the date of shipment.

(h) The Administrator may:

(1) Notify any chemical exporter that a regular customer has been disqualified or that a new customer for whom a declaration has been submitted is not to be accorded the status of a regular customer; or

(2) Determine that a chemical exporter who has been granted an exemption under this section is no longer entitled to the waiver of the 15-day advanced notice requirement.

(i) The chemical exporter will be notified in writing by the Administrator if such disqualification should occur or if the waiver of the 15-day advance notice is rescinded and the reasons for such action.

(j) The 15-day advance notice requirement will not be waived for listed precursor chemicals included in Table I of the Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances.

Public reporting (one-time) burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing and collection of information. Send comments regarding this burden estimate or any other aspect of this collection of

information, including suggestions for reducing this burden to the Drug Enforcement Administration, Records Management Section, Washington, DC 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117-xxxx, Washington, DC 20503

#### Transshipment and In-Transit Shipment of Precursors and Essential Chemicals

##### § 1313.31 Advance notice of importation for transshipment or transfer.

(a) A quantity of a chemical listed in § 1310.2 that meets or exceeds the threshold reporting requirements found in § 1310.5 may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that advance notice is given to the Drug Enforcement Administration.

(b) Each advance notice shall contain the following information and be furnished to the Drug Enforcement Administration, Drug Control Section, P.O. Box (to be designated) at least 15 days prior to the proposed chemical importation into the United States:

- (1) The date the notice was executed;
- (2) The complete name and description of the listed chemical to be imported;
- (3) The number of containers, and the size or weight of container for each listed item;
- (4) The net weight of each listed chemical given in kilograms or parts thereof;
- (5) The gross weight of the shipment given in kilograms or parts thereof;
- (6) The name, address, telephone number and telex number (if known), and business of the foreign exporter;
- (7) The foreign port of exportation;
- (8) The approximate date of exportation;
- (9) The complete identification of the exporting carrier;
- (10) The name, address, business, and telephone number of the importer, transferrer, or transshipper;
- (11) The U.S. port of entry;
- (12) The approximate date of entry;
- (13) The name, address, telephone number and telex number (if known), and business of the consignee at the foreign port of entry;
- (14) The shipping route from the U.S. port of exportation to the foreign port of entry at final destination;
- (15) The approximate date of receipt by the consignee at the foreign port of entry; and

(16) The signature of the importer, transferrer or transshipper, or his agent, accompanied by the agent's title.

(c) Unless notified to the contrary prior to the expected date of delivery, the importation for transshipment or transfer is considered approved.

(d) No waiver of the 15-day advance notice will be given for imports of listed chemicals in quantities meeting or exceeding threshold quantities for transshipment or transfer outside the United States.

##### § 1313.41 Suspension of shipments.

(a) The Administrator may suspend any importation or exportation of a chemical listed in § 1310.2 based on evidence that the chemical proposed to be imported or exported may be diverted to the clandestine manufacture of a controlled substance. If the Administrator so suspends, he shall provide written notice of such suspension to the regulated person. Such notice shall contain a statement of the basis for the order.

(b) Upon service of the order of suspension, the regulated person to whom the order applies under paragraph (a) of this section must, if he desires a hearing, file a written request for a hearing pursuant to §§ 1313.51—1313.57.

#### Hearings

##### § 1313.51 Hearings generally.

In any case where a regulated person requests a hearing regarding the suspension of a shipment of a listed chemical, the procedures for such hearing shall be governed generally by the procedures set forth in the Administrative Procedures Act (5 U.S.C. 551-559) and specifically by section 6053 of the Chemical Diversion and Trafficking Act (Pub. L. 100-690), by 21 CFR 1313.52-1313.57, and by the procedures for administrative hearings under the Controlled Substances Act set forth in §§ 1316.41-1316.67 of this chapter.

##### § 1313.52 Purpose of hearing.

If requested by a person entitled to a hearing, the Administrator shall cause a hearing to be held for the purpose of receiving factual evidence regarding the issues involved in the suspension of shipments within 45 days of the date of the request, unless the requesting party requests an extension of time.

##### § 1313.53 Waiver of modification of rules.

The Administrator or the presiding officer (with respect to matters pending before him) may modify or waive any rule in this part by notice in advance of the hearing, if he determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of

modification or waiver shall be made a part of the record of the hearing.

##### § 1313.54 Request for hearing.

Any person entitled to a hearing pursuant to § 1313.52 and desiring a hearing shall, within 30 days after receipt of the notice to suspend the shipment, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

##### § 1313.55 Burden of proof.

At any hearing regarding the suspension of shipments, the Agency shall have the burden of providing that the requirements of this part for such suspension are satisfied.

##### § 1313.56 Time and place of hearing.

(a) If any regulated person requests a hearing on the suspension of shipments, a hearing will be scheduled no later than 45 days after the request is made, unless the regulated person requests an extension to this date.

(b) The hearing will commence at the place and time designated in the notice given pursuant to paragraph (a) of this section but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

##### § 1313.57 Final order.

As soon as practicable after the presiding officer has certified the record to the Administrator, the Administrator shall issue his order on the determination on the suspension of shipment. The order shall include the findings of fact and conclusions of law upon which the order is based. The Administrator shall serve one copy of his order upon each party in the hearing.

Date: January 23, 1989.

John C. Lawn,  
Administrator, Drug Enforcement  
Administration.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[PP 8E3676/P477; FRL-3513-5]

### Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection  
Agency (EPA).

ACTION: Proposed rule.