

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****21 CFR Parts 1300 and 1313**

[Docket No. DEA-194N]

Use of the Internet To Arrange International Sales of Listed Chemicals**AGENCY:** Drug Enforcement Administration (DEA), Justice.**ACTION:** Guidance; request for comments.

SUMMARY: DEA is issuing this notice to clarify the applicability of current DEA regulations to Internet Web site providers located in the United States who serve as brokers or traders for arranging international transactions of listed chemicals. The growth in the number of Internet Web sites that provide information and services for buyers and sellers of listed chemicals has increased the possibility that there may be confusion over the applicability of DEA regulations to Web site providers serving as brokers or traders. This guidance provides information about the regulations with which Internet Web site providers located in the U.S. who serve as brokers or traders for arranging international transactions of listed chemicals must comply.

DATES: Written comments must be postmarked on or before April 19, 2004.

ADDRESSES: Comments should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, 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:**Why Is This Clarification Needed?**

DEA has been studying the increased use of the Internet to provide information and services to persons interested in buying or selling listed chemicals. Operators of some Web sites mistakenly believe that they, as merely brokers of transactions, are not required to comply with DEA regulations. However, U.S. brokers of international transactions are regulated by DEA.

There also appears to be confusion over what types of Internet services fall under the regulatory scope of DEA. There are at least two reasons for this confusion. First, some Web sites provide

a wide range of services, such as providing information and resources on chemicals, providing bulletin board services for buyers and sellers, and serving as an agent, sometimes for a fee, for arranging sales. Second, the chemicals are legal commercial products and, in many cases, only a small proportion of the chemicals included in the Web site information are listed chemicals regulated by DEA. For these reasons, Web site providers may be unaware that they are subject to DEA regulations.

This guidance explains when U.S. brokers of international transactions of listed chemicals are subject to DEA regulations, with what regulations they must comply, and the types of activities performed by Internet Web site providers that fall within the broker category and are subject to DEA regulations.

What Are Listed Chemicals?

Listed chemicals are chemicals specifically designated by the Administrator of DEA and identified in 21 CFR 1310.02 that, in addition to legitimate uses, are used in illegally manufacturing controlled substances. There are two types of listed chemicals: List I and List II. List I chemicals are important in illegally manufacturing a controlled substance; List II chemicals are chemicals other than List I chemicals used in illegally manufacturing a controlled substance. Examples of List I chemicals include ephedrine, gamma-Butyrolactone, hydriodic acid, phenylpropanolamine, red phosphorus, and pseudoephedrine. Examples of List II chemicals include acetic anhydride, acetone, hydrochloric acid, iodine, methyl ethyl ketone, potassium permanganate, and toluene.

What Is a Broker or Trader?

The terms "broker" and "trader" are defined in 21 CFR 1300.02(b)(4) to mean—

Any individual, corporation, corporate division, partnership, association, or other legal entity which assists in arranging an international transaction in a listed chemical by—

- (i) Negotiating contracts;
- (ii) Serving as an agent or intermediary; or
- (i) Fulfilling a formal obligation to complete the transaction by bringing together a buyer and seller, a buyer and transporter, or a seller and transporter, or by receiving any form of compensation for so doing.

What Is an International Transaction?

The term "international transaction" is defined in 21 CFR 1300.02(b)(15) to mean—

A transaction involving the shipment of a listed chemical across an international border

(other than a United States border) in which a broker or trader located in the United States participates.

When Are U.S. Brokers of International Transactions of List I and List II Chemicals Subject to DEA Regulations?

If brokers or traders located in the United States participate or assist in transactions involving shipments of List I or List II chemicals between two foreign countries, the brokers or traders are subject to DEA regulations relating to international transactions.

What Regulations Apply to U.S. Brokers of International Transactions of List I and List II Chemicals?

U.S. brokers of international transactions of listed chemicals are regulated by DEA under 21 CFR part 1313, Importation and Exportation of Precursors and Essential Chemicals. The following regulations apply:

Advance Notification of International Transactions

A broker or trader is required by 21 CFR 1313.32 to notify DEA no later than 15 days before an international transaction is to take place involving above-threshold amounts of a listed chemical in which the broker or trader participates. Threshold amounts for listed chemicals are provided in 21 CFR 1310.04. This notification must be made on DEA Form 486, must include the identification information listed in 21 CFR 1313.33(c), and must be mailed or faxed to DEA.

No Transactions in Violation of the Laws of the Country to Which Chemicals Are Exported

It is a violation of 21 U.S.C. 960(d)(2) (21 CFR 1313.32(c)) for a broker or trader to participate in an international transaction that he or she knows, or has reason to believe, is in violation of the laws of the country to which the chemical is exported, or knows, or has reason to believe, that the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which it is exported. Finally, under 21 CFR 1313.25 any person or company that exports any listed chemical from the United States in violation of the laws of the country to which the chemical is exported is subject to penalties.

Recordkeeping, Reporting, and Identification Requirements

In addition to the requirements specifically applicable to brokers of international transactions under 21 CFR 1313, brokers are also subject to DEA requirements that apply to regulated

persons. A broker is a "regulated person" under 21 CFR 1300.02(b)(27) and an international transaction involving the shipment of a listed chemical is considered a regulated transaction under 21 CFR 1300.02(b)(28). Therefore, brokers of international transactions involving the shipment of listed chemicals are subject to the reporting and recordkeeping requirements of 21 CFR 1310.03–1310.06 and the identification requirements of 21 CFR 1310.07.

What Is the Purpose of the 15-Day Advance Notification Requirement in 21 CFR 1313.32?

The 15-day advance notification requirement provides a critical window of opportunity for DEA to carry out its mandate of preventing the diversion of listed chemicals for illegal manufacture of controlled substances. DEA may have knowledge or information unknown to the broker indicating that the chemical may be diverted for the illegal manufacture of controlled substances.

When copies of DEA Form 486 are received, DEA immediately reviews them. If DEA has reason to believe that the chemical proposed for shipment may be diverted to the illegal manufacture of a controlled substance, the Administrator may contact the broker or trader. The information in DEA Form 486 provides the Administrator with the means to identify the diversion and the opportunity to take appropriate steps to attempt to prevent diversion.

Which Internet Web Site Providers Are Subject to DEA Requirements?

Internet Web site providers located in the U.S. who assist in arranging transactions of listed chemicals among buyers, sellers, or transporters from foreign countries are brokers or traders as defined in 21 CFR 1300.02(b)(4). Such brokers or traders must comply with 21 CFR part 1313. Assistance in arranging international transactions by a Web site provider includes the following types of activity:

- Requiring the buyer, seller, or transporter to notify the Web site provider when an agreement for a transaction has been made;
- Utilizing user profiles of Web site visitors' interests to notify the visitors of the availability of listed chemicals they want to buy, the availability of customers for listed chemicals they want to sell, or the availability of transporters to ship the chemicals; and
- Imposing a fee or commission for the Web site service.

Merely advertising foreign companies on the Web site would not be

considered "assisting in arranging international transactions." Furthermore, if the Web site provides only a bulletin board and does not monitor, facilitate, charge a fee for, or otherwise participate in any subsequent transactions, the provider would not be considered a broker or trader.

If either party to a transaction or both are located in the U.S., those companies have the responsibility to comply with the applicable requirements of 21 CFR parts 1309, 1310, and 1313, and the broker is not subject to the 15-day advance notification requirement.

DEA recommends that Internet Web site providers post a notice to their Web site users about the advance notification requirement for international transactions of listed chemicals so that buyers and sellers can plan their transactions accordingly. Web site providers acting as brokers of international transactions are subject to the civil and criminal penalties under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 *et seq.*), including 21 U.S.C. 842, 843, and 960 for any failure to comply with DEA regulations.

While the advance notification and the recordkeeping requirements impose a modest burden on brokers and traders, it is a necessary burden that provides DEA with important information that could prevent the diversion of listed chemicals.

What Additional Information Is DEA Requesting?

DEA requests comments on the following topics to better understand brokering/trading of listed chemicals on the Internet and to make it as easy as possible for Internet providers who serve as brokers or traders of international transactions of listed chemicals to comply with the regulations.

1. How do you provide assistance to chemical buyers and sellers through your Internet Web site?
2. At what point do you as a broker become involved in the transaction?
3. How will complying with the advance notification requirements affect the services you provide to buyers and sellers?
4. What is the size and scope of this emerging segment of the chemical industry?
5. What changes in the nature and methods of buying and selling listed chemicals have been brought about by the use of the Internet?
6. What does the future hold for the use of the Internet in this business?

DEA welcomes answers to these questions and any additional relevant

information that you can provide. Please send comments to the address listed above under **ADDRESSES**.

Dated: February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

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DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 4625]

RIN 1400–ZA08

Amendment to the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by modifying the denial policy regarding the Democratic Republic of the Congo (DRC).

EFFECTIVE DATE: February 17, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Management, ATTN: Regulatory Change, DRC, 12th Floor, SA–1, Washington, DC 20522–0112. Comments will be accepted at any time.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Sweeney, Office of Defense Trade Controls Management, Department of State, Telephone (202) 663–2700 or FAX (202) 261–8199.

SUPPLEMENTARY INFORMATION: On April 29, 1993, the Department imposed a suspension and denial policy for all licenses and other approvals to export or otherwise transfer defense articles or defense services to Zaire (currently the DRC) (58 FR 26024, April 29, 1993). That action was taken in response to the violence and death fueled by the regime of President Mobutu. Zaire was added to the proscribed destination list at section 126.1 of the ITAR on July 22, 1993 (58 FR 39312, July 22, 1993).

UN Security Council Resolution 1493 (July 28, 2003) imposed an arms embargo on all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-Inclusive Agreement, in the DRC. The resolution qualified that those measures shall not apply to:

—Supplies to United Nations Organization Mission in the Democratic