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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[Docket No. DEA-555]

Technical Correction to Regulation Regarding Registration Exception for Officials

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule; technical correction.

SUMMARY: This final rule updates a Drug Enforcement Administration regulation involving exemption from registration for law enforcement officials by removing an inapposite cross-reference listing. This action makes no substantive changes to this regulation.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 776-3882.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Controlled Substances Act (CSA) grants the Attorney General authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances; as well as the maintenance and submission of records and reports of registrants; and that are necessary and appropriate for the efficient execution of his statutory functions. 21 U.S.C. 821, 827, 871(b). The Attorney General is further authorized by the CSA to promulgate rules and regulations relating to the registration and control of importers and exporters of controlled substances. 21 U.S.C. 958(f). The Attorney

General has delegated this authority to the Administrator of the Drug Enforcement Administration (DEA). 28 CFR 0.100(b).

Technical Correction

Section 1301.24(a) of title 21 of the CFR provides that various law enforcement officials, including certain DEA officers or employees, are exempt from the registration requirement, and no change is being made in that provision.[1]

DEA is amending 21 CFR 1301.24(b) by removing the cross-reference to 21 CFR 1316.03(d). Section 1301.24(b) currently provides, among other things, that any such official exempted under paragraph (a), and acting in the course of his or her official duties, may procure controlled substances during an inspection, in accordance with § 1316.03(d).

Section 1316.03(d) pertains to a DEA inspector entering controlled premises and conducting administrative inspections under the CSA and the regulations. If the DEA inspector collects samples of controlled substances or listed chemicals, § 1316.03(d) provides that the inspector will issue receipts on DEA Form 400 for samples of controlled substances or listed chemicals collected during an inspection. Accordingly, this particular provision would apply only to DEA inspectors conducting administrative inspections, and not to any other law enforcement official that is exempted under 21 CFR 1301.24(a). Section 1316.03(d) remains applicable by its terms to DEA inspectors conducting administrative inspections, and so there is no need to include a cross-reference to this provision in § 1301.24(a). In addition, only DEA officers or employees would have access to such a form. Therefore, DEA has concluded it is best that this inapposite cross-reference to § 1316.03(d) be removed, as this will eliminate any confusion.

Regulatory Analyses

Administrative Procedure Act

[1] See 21 CFR 1301.11(a).

The Administrative Procedure Act (APA) (5 U.S.C. 553) does not require notice and the opportunity for public comment where the agency for good cause finds that notice and public comment are unnecessary, impracticable, or contrary to the public interest under 5 U.S.C. 553(b)(B). This rule contains a technical correction; it imposes no new or substantive requirement on the public or DEA registrants. As such, DEA has determined that notice and the opportunity for public comment on this rule are unnecessary. See 5 U.S.C. 553(b)(B) (relating to notice and comment procedures). "[W]hen regulations merely restate the statute they implement, notice-and-comment procedures are unnecessary." Gray Panthers Advocacy Committee v. Sullivan, 936 F.2d 1284, 1291 (D.C. Cir. 1991); *see also* United States v. Cain, 583 F.3d 408, 420 (6th Cir. 2009) (contrasting legislative rules, which require notice-and-comment procedures, "with regulations that merely restate or interpret statutory obligations," which do not); Komjathy v. Nat. Trans. Safety Bd., 832 F.2d 1294, 1296 (D.C. Cir. 1987) (when a rule "does no more than repeat, virtually verbatim, the statutory grant of authority" notice-and-comment procedures are not required). Because this is not a substantive rule, and as DEA finds good cause under 5 U.S.C. 553(d)(3) for the above reason, this final rule takes effect upon date of publication in the *Federal Register.*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This final rule was developed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to, and reaffirms, the principles, structures, and definitions governing regulatory review as established in E.O. 12866. The Office of Information and Regulatory Affairs (OIRA) has deemed that this is not significant regulatory action under E.O. 12866, and accordingly it has not been reviewed by OIRA.

Executive Order 12988, Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This final rule does not have federalism implications warranting the application of E.O. 13132. The final rule does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of Government.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This final rule does not have tribal implications warranting the application of E.O. 13175. This rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the above discussion regarding applicability of the APA, DEA was not required to publish a general notice of proposed rulemaking prior to this final rule. Consequently, the RFA does not apply.

Unfunded Mandates Reform Act of 1995

DEA has determined and certified pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.*, that this action will not result in any Federal mandate that may result in the expenditure by State, local and tribal Governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under the provisions of UMRA.

Paperwork Reduction Act of 1995

This action does not involve a collection of information requirement under the Paperwork Reduction Act, 44 U.S.C. 3501-3521. This action would not impose recordkeeping or reporting requirements on State or local Governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. Because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties, the reporting requirement under 5 U.S.C. 801 does not apply.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

For the reasons set out above, 21 CFR part 1301 is amended as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 956, 957, 958, 965 unless otherwise noted.

§ 1301.24 [Amended]

2. Amend § 1301.24(b), by removing ", in accordance with § 1316.03(d) of this chapter,".

Signing Authority

This document of the Drug Enforcement Administration was signed on November 1, 2022, by Administrator Anne Milgram. That document with the original signature and date is

maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Scott Brinks,
Federal Register Liaison Officer,
Drug Enforcement Administration.

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