



DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1305

[Docket No. DEA-1005]

Ordering Schedule I and II Controlled Substances using DEA Form 222; Technical Amendments

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule, technical amendment.

SUMMARY: On September 30, 2019, the Drug Enforcement Administration (DEA) published the final rule, New Single-Sheet Format for U.S. Official Order Form for Schedule I and II Controlled Substances (DEA Form 222). The final rule implemented a new single sheet format for DEA Form 222 and provided for a two-year transition period to switch from the triplicate form. This technical amendment corrects certain regulations erroneously not amended in the final rule which creates ambiguities. The amendment clarifies that a DEA Form 222 Power of Attorney may only be executed or revoked by a registrant, a partner of the registrant, or an officer of a registrant corporate entity. It resolves ambiguity over who may sign a DEA Form 222 and removes the obsolete transition provision for the triplicate version of DEA Form 222. These are conforming revisions that do not make any substantive changes to the regulations.

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

FOR FURTHER INFORMATION CONTACT: Heather Achbach, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 776-3882.

SUPPLEMENTARY INFORMATION:

I. 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;¹ as well as the maintenance and submission of records and reports² that are necessary and appropriate for the efficient execution of his statutory functions.³ 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.⁴ The Attorney General has delegated these authorities to the Administrator of the Drug Enforcement Administration (DEA).⁵

II. Technical Amendment to Power of Attorney for DEA Form 222 and Electronic Orders

Pursuant to DEA's current regulations, "A registrant may authorize one or more individuals . . . to issue orders for schedule I and II controlled substances on the registrant's behalf by executing a power of attorney for each such individual."⁶ In the 2019 final rule, DEA amended 21 CFR 1305.05(d)(1) to require that a DEA Form 222 Power of Attorney (POA) must be executed by "the registrant, if an individual; a partner of the registrant, if a partnership; or an officer of the registrant, if a corporation, corporate division, association, trust or other entity."⁷ Prior to that amendment, DEA regulations provided, in relevant part, that a POA could be executed or revoked by the person who signed the most recent application for a DEA registration or re-registration. During the comment period, DEA received numerous comments about the POAs, noting that the proposed amendment would be more restrictive than the then-current rule with respect to who could sign a POA. DEA was clear in its response that due to "the significance of Form 222 signature authority, and the potential for diversion when that

¹21 U.S.C. 821.

² 21 U.S.C. 827.

³ 21 U.S.C. 871(b).

⁴ 21 U.S.C. 958(f).

⁵ 28 CFR 0.100(b).

⁶ 21 CFR 1305.05(a).

⁷ 21 CFR 1305.05(d)(1).

authority is abused, the DEA deems it appropriate to require an officer, a partner, or the registrant him- or herself to sign POAs under 21 CFR 1305.05.”⁸ However, due to an administrative error, two related provisions of 21 CFR 1305.05 were not modified at that time: 21 CFR 1305.05(c) which provides form language for a DEA Form 222 POA and the notice of revocation of a POA, and 21 CFR 1305.05(e), which explains who must revoke a POA.

In this technical amendment, DEA is merely replacing the language in those provisions, 21 CFR 1305.05(c) and 21 CFR 1305.05(e), to mirror the language of 21 CFR 1305.05(d)(1), which more precisely specifies who is authorized to execute a POA to order schedule I and II controlled substances. Directly substituting this language allows for clarity and consistency in the regulations, as 21 CFR 1305.05(c) and 21 CFR 1305.05(e) should have the same precise language of 21 CFR 1305.05(d)(1), specifically: a power of attorney must be executed by “[t]he registrant, if an individual; a partner of the registrant, if a partnership; or an officer of the registrant, if a corporation, corporate division, association, trust or other entity.”⁹ Thus, 21 CFR 1305.05(c) will no longer allow a person authorized to sign an application for registration to execute or revoke a POA to sign DEA Form 222s. Similarly, 21 CFR 1305.05(e) will no longer allow a person authorized to sign an application for registration to revoke a POA to sign DEA Form 222s.

In addition, DEA is making a similar conforming revision in 21 CFR 1305.12(d) to clearly establish who is authorized to sign a DEA Form 222. The amended provision clarifies that a DEA Form 222 must be signed by the registrant, if an individual; a partner of the registrant, if a partnership; or an officer of the registrant, if a corporation, corporate division, association, trust or other entity. This removes prior language which referred the reader to 21 CFR 1305.05 but included a provision allowing a person who signed the last application for a DEA registration to sign a DEA Form 222.

⁸ 84 FR at 51368.

⁹ 21 CFR 1305.05(d)(1).

a. Removal of Triplicate DEA Form 222 Regulatory Text

When DEA implemented the single sheet format for DEA Form 222 in September 2019, 21 CFR 1305.20 was promulgated to explain the transition process for DEA registrants to switch from the triplicate form to the single sheet form. Registrants were given a two-year transition period allowing the continued use of their existing stock of triplicate DEA Forms 222 before switching to the single sheet format.¹⁰ On October 30, 2021, DEA ceased accepting the triplicate form of DEA Form 222.¹¹ Thus, 21 CFR 1305.20 is obsolete, and DEA is removing this section from DEA’s regulations and reserving it for future use.

III. Regulatory Analysis

a. Administrative Procedure Act

DEA is issuing this final rule without prior notice and an opportunity to comment pursuant to the Administrative Procedure Act’s (APA) (5 U.S.C. 553) “good cause” exception. In certain circumstances, an agency may forgo the notice-and-comment rulemaking when a rulemaking is published in the Federal Register and the agency “for good cause finds...that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹²

This rule contains only technical corrections to DEA’s current regulations, and 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. Because this is not a substantive rule, and as DEA finds good cause pursuant to 5 U.S.C. 553(d)(3), this final rule takes effect upon date of publication in the *Federal Register*.

b. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 (Regulatory Review)

¹⁰ 84 FR 51368 (Sept. 30, 2019).

¹¹ 21 CFR 1305.20(a).

¹² 5 U.S.C. 553(b)(B).

DEA has determined that this rulemaking is not a “significant regulatory action” under section 3(f) of Executive Order (E.O.) 12866, Regulatory Planning and Review. Accordingly, this proposed rule has not been submitted to the Office of Management and Budget (OMB) for review. This proposed rule has been drafted and reviewed in accordance with E.O. 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation; E.O. 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation; and E.O. 14192 “Unleashing Prosperity Through Deregulation.”

c. Executive Order 12988, Civil Justice Reform

This 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.

d. Executive Order 13132, Federalism

This 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.

e. Executive Order 14294, Overcriminalization of Federal Regulations

Executive Order 14294 specifies that all notices of proposed rulemaking (NPRMs) and final rules published in the *Federal Register*, the violation of which may constitute criminal regulatory offenses, should include a statement identifying that the rule or proposed rule is a criminal regulatory offense, the authorizing statute, and the mens rea requirement for each element of the offense. Since this final rule does not involve a criminal regulatory offense, E.O. 14294 does not apply.

f. Executive Order 14267 Reducing Anti-Competitive Regulatory Barriers

The final rule does not reduce competition, entrepreneurship, and innovation.

g. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This 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.

h. 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 explained above, DEA determined that there is good cause to exempt this rule from notice and comment. Consequently, the RFA does not apply to this final rule.

i. Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 et seq., DEA has determined 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.

j. Congressional Review Act

This rule is not a major rule as defined the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this final rule to both Houses of Congress and to the Comptroller General.

k. Paperwork Reduction Act

This final rule involves existing collection 1117-0010 but does not impose a new collection or modify an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). This action does not impose additional 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 OMB control number. Copies of the approved existing information collection may be obtained at <http://www.reginfo.gov/public/do/PRAMain>.

List of Subjects in 21 CFR Part 1305

Drug traffic control, reporting and recordkeeping requirements.

For the reasons stated in the preamble, DEA amends 21 CFR part 1305 as follows:

PART 1305—ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

1. The authority citation for part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b), unless otherwise noted.

2. In § 1305.05, revise paragraphs (c) and (e) to read as follows:

§ 1305.05 Power of attorney.

* * * * *

(c) The power of attorney and notice of revocation must be similar to the following format:

Power of Attorney for DEA Forms 222 and Electronic Orders

(Name of registrant)

(Address of registrant)

(DEA registration number)

I, _____ (name of person granting power), the undersigned (the registrant, if an individual; a partner of the registrant, if a partnership; or an officer of the registrant, if a corporation, corporate division, association, trust or other entity), have made, constituted, and appointed, and by these presents, do make, constitute, and appoint ____ (name of attorney-in-fact), my true and lawful attorney for me in my name, place, and stead, to execute applications for Forms 222 and to sign orders for schedule I and II controlled substances, whether these orders be on Form 222 or electronic, in accordance with 21 U.S.C. 828 and Part 1305 of Title 21 of the Code of Federal Regulations. I hereby ratify and confirm all that said attorney must lawfully do or cause to be done by virtue hereof.

(Signature of person granting power)

I, _____ (name of attorney-in-fact), hereby affirm that I am the person named herein as attorney-in-fact and that the signature affixed hereto is my signature.

(signature of attorney-in-fact)

Witnesses:

1. _____

2. _____

Signed and dated on the ____ day of ____, (year), at _____.

Notice of Revocation

The foregoing power of attorney is hereby revoked by the undersigned (the registrant, if an individual; a partner of the registrant, if a partnership; or an officer of the registrant, if a corporation, corporate division, association, trust or other entity). Written notice of this revocation has been given to the attorney-in-fact _____ this same day.

(Signature of person revoking power)

Witnesses:

- 1. _____
- 2. _____

Signed and dated on the ____ day of ____, (year), at _____.

* * * * *

(e) A power of attorney must be revoked by:

- (1) The registrant, if an individual; a partner of the registrant, if a partnership; or an officer of the registrant, if a corporation, corporate division, association, trust or other entity; and
- (2) Two witnesses.

* * * * *

3. In 1305.12, revise paragraph (d) to read as follows:

§ 1305.12 Procedure for executing DEA Forms 222.

* * * * *

(d) Each DEA Form 222 must be signed and dated by the registrant, if an individual; a partner of the registrant, if a partnership; or an officer of the registrant, if a corporation, corporate division, association, trust or other entity; or a person granted power of attorney to sign a DEA Form 222 under § 1305.05. The name of the purchaser, if different from the individual signing DEA Form 222, must also be inserted in the signature space.

* * * * *

§ 1305.20 [Removed and Reserved]

4. Remove and reserve § 1305.20.

SIGNING AUTHORITY

This document of the Drug Enforcement Administration was signed on March 3, 2026, by Administrator Terrance C. Cole. 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.

Heather Achbach,
Federal Register Liaison Officer,
Drug Enforcement Administration.

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