

DEA Proposes Rule to Significantly Alter Theft and Loss Reporting Requirements

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On July 29, 2020, DEA's new Acting Administrator published a [proposed rule](#) that would, if finalized, alter the requirements for reporting thefts and significant losses to DEA. The rule would place a limit on the time frame for filing DEA Form 106s to 15 days after discovery of a theft or significant loss and require reporting through an electronic system. Comments on the proposed rule must be submitted by September 28, 2020.

Currently, DEA's regulations, 21 CFR 1301.74(c) and 1301.76(b), require that thefts and significant losses of controlled substances be reported in writing to the registrant's DEA local field office within one business day of discovery. In a preamble to amendments to that rule, DEA elaborated on the reporting requirement. See [70 Fed. Reg. 47094-47097 \(Aug. 12, 2005\)](#). DEA explained that registrants should report a suspected theft or significant loss to the local field office within one business day of discovery and then submit a DEA Form 106 once the facts and circumstances of the theft or significant loss are determined. In 2005, DEA declined to specify a time frame for submitting the DEA Form 106, and in response to a proposal that a 30-day time limit be imposed, DEA recognized that it may be "difficult to comply with in some cases, so [DEA] prefers to retain the registrant flexibility provided . . . , i.e., DEA Form 106 should be submitted once the circumstances surrounding the theft or significant loss are clear, but updates should be provided to DEA if the investigation takes more than two months."

DEA's recently issued proposed rule would significantly alter this guidance by requiring that an investigation into a suspected theft or significant loss be completed within 15 days of discovery. We anticipate that this may have a significant impact on DEA registrants who are unable to conduct a thorough investigation within 15 days. If the investigation is incomplete, it may impede the agency's ability to investigate thefts and significant losses and, therefore, detect diversion.

As theft and loss reporting is one of the primary catalysts for a DEA investigation, Epstein Becker Green encourages entities that will be impacted by this proposed rule to submit comments on the proposed rule and to request clarification on other aspects of DEA's theft and significant loss reporting requirements. If you are interested in

submitting comments, please contact the Epstein Becker Green attorney with whom you regularly work or the author of this Client Alert.

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*This Client Alert was authored by **Delia A. Deschaine**. For additional information about the issues discussed in this Client Alert, please contact the author or the Epstein Becker Green attorney who regularly handles your legal matters.*

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