2011 SENATE JUDICIARY

SB 2119

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2119
1/19/11
Job #13119

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the scheduling of controlled substances

Minutes: There is attached written testimony

Senator Nething – Chairman

Howard Anderson – Executive Director ND Board of Pharmacy – See written testimony.

Senator Sitte – Asks about medical marijuana.

Anderson – Replies that Marinol is oil based, sesame oil capsule with active drug in it. It is not smoked it is taken orally. That is the only approved drug product now that has the active ingredient of marijuana. He says we do not have approved medical marijuana that is typically smoked.

Senator Sitte – Relates her reading about THC induced comas.

Anderson – Says that all the drugs we have for medical uses have a legend on them that says "this requires a prescription of a practitioner". The reason is because they all have side effects. He explains the bad side effects of drugs.

Wayne Stenehjem – Attorney General of ND – Provides attachment. He said he has received reports from law enforcement officers, school, probation officers and judges about new chemical substances among young people. He tells of some of the names these substances are called. Hospital emergency rooms are also reporting a variety of adverse reactions resulting from the use of these products. He said research revealed that the active ingredient in one product was similar to that in marijuana and indications that its potency greatly exceeded that of THC. He said then the product was legal. The product was marketed as incense, aromatherapy product or other legal purpose. The product was sold in excess of anything that would be seen for traditional incense. It was more similar to the street prices for marijuana, as much $35 to $50 per gram. He obtained some of the product and passed around some of the examples that are being sold. He said these products have been banned in a lot of European countries and now several U.S. states. He also passes around a sample of the bath salts which sell for about $50 a gram. He

studies on these products have not been completed and there is no quality control so use of the product can have consequences. He relates what some of these products have in them and people assumed since the products were legal they were also safe. These products have no known medical use. They do have a high potential for abuse. He said that after the Board of Pharmacy enacted its emergency rule Attorney General began to enforce it state wide. The head shops then moved across the border to sell it legally and people went there to buy it and bring it back into ND. He said the chemical compounds are constantly changing and now it's another drug and not listed.

Charlene Schweitzer –Forensic Scientist – Crime Laboratory Division – See written testimony.

Senator Olafson – States that chemists can slightly alter these compounds then our law isn't any good. He asks if we can't work with classes of compounds instead of specific compounds and writing them into the code in order to preclude a slight alteration in the chemical compound no longer makes the drug illegal. He asks as a chemist if she thinks this is a direction we should pursue.

Schweitzer – Replies, she does. She says Kansas is now to their legislature and purposing to do this. She said they are looking into it. She said they find new substances every week.

Attorney General – Would like to hold off on this to see what Kansas does. See what wording they use.

Senator Olafson – Asks if the internet is a centralized clearing house for information on what kinds of strange stuff you can smoke or inject. He asks if it's a big factor and can we minimize its impact.

Attorney General – Replies yes it is. A lot comes in from China so those governments need to become involved.

Close the hearing on SB2119

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2119
2/9/11
Job #14281

☐ Conference Committee

Committee Clerk Signature	

Explanation or reason for introduction of bill/resolution:

Relating to the scheduling of controlled substances

Minutes: There is an attached amendment

Senator Nething - Chairman

The committee reads over an amendment brought in by the Attorney General. Senator Nething reads a part of the amendment for students sitting in the room.

Senator Olafson moves to adopt the amendments
Senator Sitte seconds

Discussion – Senator Sitte explains to the students what is being banned by this bill.

Verbal vote – all yes

Senator Olafson moves a do pass as amended
Senator Sitte seconds

Roll call vote – 6- 0
Motion carries

Senator Nelson will carry

Date: 2/9/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2119

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S Olafson Seconded By S Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			**Carolyn Nelson**		
Curtis Olafson – V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal all yes

Date: 2/9/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2119

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Olafson Seconded By S. Sitte.

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson – V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment S. Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2119: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2119 was placed on the Sixth order on the calendar.

Page 5, line 14, replace "5-Methoxy-N,N-Dimethyltrytamine" with "5-Methoxy-N,N-Dimethyltryptamine"

Page 7, line 2, after "chemicals" insert "and chemical groups"

Page 7, replace lines 5 through 17 with:

"(1) Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

(a) 1-Pentyl-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678.

(b) 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073.

(c) 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081.

(d) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200.

(e) 1-Propyl-2-methyl-3-(1-naphthoyl)indole - Other names: JWH-015.

(f) 1-Hexyl-3-(1-naphthoyl)indole - Other names: JWH-019.

(g) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole - Other names: JWH-122.

(h) 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole - Other names: JWH-210.

(i) 1-Pentyl-3-(4-chloro-1-naphthoyl)indole - Other names: JWH-398.

(j) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole - Other names: AM-2201.

(2) Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

(a) 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane - Other names: JWH-175.

(b) 1-Pentyl-1H-indol-3-yl-(4-methyl-1-naphthyl)methane - Other names: JWH-184.

(3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include:
(5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone - Other names: JWH-307.

(4) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3 position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1 (N methyl 2 piperidinyl)methyl or 2 (4 morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include:
E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane - Other names: JWH-176.

(5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent. Examples include:

(a) 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole - Other names: RCS-8.

(b) 1-Pentyl-3-(2-methoxyphenylacetyl)indole - Other names: JWH-250.

(c) 1-Pentyl-3-(2-methylphenylacetyl)indole - Other names: JWH-251.

(d) 1-Pentyl-3-(2-chlorophenylacetyl)indole - Other names: JWH-203.

(6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples include:

(a) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: CP 47,497.

(b) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: Cannabicyclohexanol and CP 47,497 C8 homologue.

(c) 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol - Other names: CP 55,940.

(7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples include:

(a) 1-Pentyl-3-(4-methoxybenzoyl)indole - Other names: RCS-4.

(b) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole) - Other names: AM-694.

(c) (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone - Other names: WIN 48,098 and Pravadoline.

(8) Others specifically named:

(a) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a tetrahydrobenzo[c]chromen-1-ol - Other names: HU-210.

(b) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: Dexanabinol and HU-211.

(c) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone - Other names: WIN 55,212-2."

Page 12, after line 12, insert:

"c. Immediate precursors to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP)."

Renumber accordingly

2011 HOUSE JUDICIARY

SB 2119

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2119
March 7, 2011
15007

☐ Conference Committee

Committee Clerk Signature

Minutes:

Chairman DeKrey: We will open the hearing on SB 2119.

Howard Anderson, Executive Director, State Board of Pharmacy: Support, explained the bill section by section (attached 1, 2).

Rep. Klemin: On page 6, line 23, I see you have in there "including synthetic substances" and so forth. Is that intended to take care of that issue you were describing. That was in the old language that you struck through.

Howard Anderson: You're looking on page 6, line 23. The intention there is that if somebody synthetically manufactured a drug which was identical to the one that came from the plant, those would also be included even though they made them synthetically, and they didn't actually extract them. Those would be the ones that are identical to the ones that are in the plant. That's the intention of leaving that in there.

Howard Anderson: Continued with the next section.

Rep. Koppelman: So you're saying that the description that you have, I think you're still referring to page 7 of the bill. Do those descriptions capture what you're aiming at here and you think it would also capture these cases where someone might spray a substance, be it synthetic or whatever on something else and sell that.

Howard Anderson: Yes. That's the intention so that we won't be in the reactive mode and every time somebody ends up in the hospital using one of these drugs, we won't be trying to schedule an emergency meeting in the meantime. Of course, the people who are doing this and selling this stuff, they know that even if it's not illegal now, it should be; otherwise they wouldn't be selling them with unlabeled products and advising the people to take them home and smoke them or use them in their bong and see what happens to you after you do that. That's basically what happens. That's the intention. We hope that you will agree; if you do this, we may be the first, if NE doesn't move as quickly as you do, to do this category approach.

We don't mind being first in ND. I think it is a good approach and I think it should be effective.

Howard Anderson: On page 10.....(continued).

Rep. Koppelman: You mentioned that was a muscle relaxant, are there any other redeeming uses on these other substances and can you explain what "scheduling" means. It doesn't necessarily mean they are illegal.

Howard Anderson: Scheduled drugs are as follows: Schedule I, if they have a potential for abuse and no approved medical use in the United States. There are sometimes drugs that are approved in other countries which we schedule here. Some years ago we did Rohipnal in ND which is available for sale in other countries but it hadn't been approved as a drug in the US. We scheduled it as a Schedule I because that was the date rape drug that we were seeing on our campuses. Schedule II are the drugs that have the most potential for abuse and are abused and they are usually drugs which are alone. For example, Codeine is schedule II if it's just codeine; when we get to the drugs that are mixed with something else, like acetaminophen or aspirin, we put them in schedule III; because there is a little less likelihood for abuse because you have this other drug that you have to be concerned about. Of course, whether that's a good idea or not, it's the way it's done. One of the disadvantages to that is, of course, we have a lot of people who end up with acetaminophen overdosages, because they are taking schedule III, hydrocodone and then they get an overdose. The standard is, if they are mixed with other drugs, they move down to Schedule 3, so Tylenol with Codeine, Hydrocodone and acetaminophen, and so forth gets sometimes scheduled in Schedule III. Then we move down to Schedule IV, that has less potential for abuse, but it is still an abusable drug and there you see the class of benzodiazepine, like Valium; we have several – Elprazalam, which shows up a lot now like Zanax. The benzo's have potential for abuse, they also have an addiction potential. Once you've taken them for a period of time, you need to taper off, or you get some nasty side effects if you just stop quickly. The Schedule V drugs are those which still have some potential for abuse, and in many states, Schedule V drugs are not prescription; you can buy them over the counter by signing the register and say I want some codeine cough syrup. Many years ago, we took those into Schedule V in ND, so that you have to have a prescription to get them. They are still abused. I have one of my pharmacist's who was drinking codeine cough syrup just the other day. Even we do that sometimes, as well as the public and the patients. Some states have chosen to schedule pseudoephedrine which is the precursor and used to make methamphetamine. In several states now, they have actually put pseudoephedrine into Schedule V, which means that you have to have a prescription for that in order to get it.

Rep. Koppelman: So, Schedule I are just illegal drugs that are not legally available anywhere and don't have any medicinal purpose. Everything beyond that is

scheduled, available by prescription, but scheduling just has to do with their danger level, or their likelihood for abuse or addiction.

Howard Anderson: Yes. That's correct. Schedules II, III, IV, and V are available on prescription and do have approved medical uses. Schedule I means no approved medical use in this country, but still potential for abuse.

Howard Anderson: On page 22 ..... (Continued with testimony).

Rep. Delmore: Where did you say the ingredient in Claritin D was for making meth, what Schedule is that.

Howard Anderson: Right now, it's not scheduled in ND, pseudoephedrine is not scheduled. Some states have placed it into Schedule V, which means you would have to have a prescription to buy pseudoephed or pseudoephedrine over the counter. It's available over the counter in ND now. We have chosen to use our lists, you have to sign up and show your driver's license when you purchase it, and the record is there so law enforcement can look at it in case somebody they suspect is making it. Of course, I think there is another bill that you have which the Attorney General has asked to use an automatic scheduling at the point of sale, so that we keep a record of those sales.

Rep. Delmore: As long as it's not something that has to be prescribed, we don't need to cover it in any of these lists, correct.

Howard Anderson: Yes, that's correct. It would be ND's choice if they wanted to schedule a Schedule V, but we haven't recommended that and neither has the Attorney General at this point. Right now we have grocery stores, convenience stores, etc. that sell pseudoephedrine. Of course, if you made it prescription only, it means that they can't sell it anymore. That's a choice that we would need to make but we haven't recommended that at this point in time in ND.

Rep. Klemin: In your testimony you state that you are listing a drug in our schedule because it has been or soon will be listed in the DEA schedule and we want to match that schedule. Since we have the federal schedules, why do we need to put this in state schedules, too. Why can't we incorporate by reference the federal schedule.

Howard Anderson: One of the reasons, and there a couple of prosecutors here today that could answer that. Obviously, if law enforcement picks somebody up and you want to charge them in state court or state law, you need a state law for that. They have a difficulty charging them under federal law and most of these charges don't get moved into federal court; that's my interpretation of that. That's why we've always scheduled them in ND, because that let's our law enforcement and courts handle the cases in ND without having to put it into federal court.

Rep. Koppelman: Are there other drugs that are scheduled by administrative rule or are they all in statute. Have you scheduled some by rule before, not by emergency rule, during the interim and then come back during the session and put them in Code.

Howard Anderson: The history of the Board of Pharmacy, of course, years ago when I was on the Board of Pharmacy, we used to just move motions and scheduled drugs, and then we sent them to Legislative Council and they put them into the Code. Well the Legislature and the courts decided that wasn't a good way to make laws and they might have been right. That's the way we did it. When we could no longer do that process, we have not made rules because most of the time, when they are scheduled federally, as I said, pharmacies and doctors know about them. The only downside would be if law enforcement picks somebody up and then couldn't charge them under state law in that interim period. We have not done scheduling; it takes time, energy, and money and it takes about as much energy to make rules now as it does to make laws. In this case, with the emergency scheduling, the Board felt that we needed to do something or we were going to have more people hurting themselves. That's why we did the emergency scheduling in this case and, of course, as most of you know the history of that. It worked; we got them off the market pretty quickly. It didn't work well for the prosecutors; they had some trouble making their cases, but certainly the head shops in ND weren't selling them and pretending they were legitimate anymore.

Rep. Koppelman: Rep. Klemin's question went to the idea of why we do have all of this in the Code, if it mirrors the federal DEA schedule and the implication there was that we could adopt that Code by reference and whenever it would change, ours would automatically change. That's on option. Of course, having it in Code like we do, is another. A third option it seems to me, might be doing it through rule, authorizing the Board of Pharmacy to do it, you couldn't just pass a motion to do it, as you described earlier, but you could go through the rule-making process. The advantage to that would be that you could do it whenever needed vs. every two years. Of course, as we talked about you have that emergency authority if you have to.

Howard Anderson: We do have the power to schedule now; we can do that. We don't have to do an emergency rules obviously, but we can do regular rule-making process which we did in that case too, it just took longer. The rules, technically, weren't affecting the regular rule-making process until October 1st even though the emergency scheduling was effective February 26. So you see there is a seven month window in there, by the time you actually made the rules. Keep in mind, in ND, if you schedule substances by reference in the federal law, the Legislative Council tells me that it's unconstitutional to reference the federal law unless you pick a specific date. For example, if you picked a date as of today when you passed the legislation, it still wouldn't do any good until the next session, you see. You would get out of having this long list written in the state code.

Chairman DeKrey: Thank you. Further testimony in support.

Ben Leingang, ND Bureau of Criminal Investigation, assigned to the Metro Area Narcotics Task Force in Bismarck: Support (passed around samples of Spark and Stardust).

Rep. Hogan: How much of this are you seeing in your area.

Ben Leingang: We see a significant amount of both of these substances. There has been a decrease since the emergency rule came into effect last year when it was passed. However, it is still a significant threat. We do see it on a continuous basis. We do arrest people on a weekly basis with these drugs. It still poses a significant problem.

Rep. Hogan: Are you aware if it's a statewide issue.

Ben Leingang: Yes, it is. We see it statewide. It's big in Bismarck/Mandan but also Fargo, Grand Forks, Minot, all over the state. A lot of people are still going to Moorhead, MN where it is still legal; purchasing large amounts and then bringing those drugs back to Bismarck/Mandan, wherever in the state and selling it for double the price and making money and are still able to sell it to their customers.

Chairman DeKrey: What do you do with these products.

Ben Leingang: I can briefly explain, the State Crime Lab could as well. Stardust is basically bath salts; it's the drug methadone, users commonly either put it in a glass pipe and smoke it or they inject it with a needle into their veins.

Chairman DeKrey: Wouldn't it just be easier to go and buy bath salts.

Ben Leingang: That's a typical question. I have interviewed numerous people that I've arrested for these items and every single one of them are asked what do you use it for, and they all use it for smoking or ingesting it. There hasn't been one person that I've interviewed that actually uses that to take a bath with.

Rep. Koppelman: After the incident that Mr. Anderson referred to during the last interim when there was the case in Cass County and the emergency scheduling of some of these substances, and then the judge's ruling having to do with the procedure basically of emergency rulemaking, and as he described the Board also embarked upon conventional rulemaking at the same time. It wasn't a question of whether the rule would be effective, but when. By the way, we have since during this session, responded to that judge's ruling so that, hopefully, the rulemaking process is tighter than it used to be. During that interim time, from the time when the judge found fault with the emergency rulemaking process and the time that the normally promulgated rule went into effect, what was law enforcement's reaction. How did you deal with these substances.

Ben Leingang: We continued on with business as usual. We kept investigating these drug dealers and the people that used these substances. We kept on with our jobs waiting to see what the ultimate rulings would be.

Rep. Koppelman: It was my understanding that in Cass County, at least, where that case came down, understanding that the ruling of a district court judge in Cass County, doesn't bind the whole state, the way a Supreme Court ruling would. In Cass County, they sort of waited until the rule was effective. It was my understanding, that in the rest of the state, that didn't necessarily apply as the procedure that was followed.

Ben Leingang: I can speak on behalf of Bismarck/Mandan area; we continued to seize the substances and move on with the cases. Although as you mentioned, numerous cases were dismissed as well, as in the Fargo/Cass County area. I know some agencies

temporarily stopped arresting and prosecuting people for the crimes; they just collected the drugs and waited until there was a date set in stone.

Rep. Steiner: Have you seen anything in the west with the oil field employees coming from all over the country and I know in Dickinson, we have a group of Russian young people, who've moved in. What are you seeing out there.

Ben Leingang: We do see these drugs, as well as the traditional methamphetamines, being used in the oil fields. Stardust is a common drug they use. They use meth to get high, to get energy so that they can work longer, more hours/more days. It is a problem. We also see the drug paraphernalia, which are devices being used to smoke these products, are being purchased from stores in this area, as well as in Fargo and out-of-state where it is legal until you use it to smoke drugs. These items are being sold to the oil workers for double price, to make money to support their habits with these drugs.

Rep. Steiner: Does it show up in their drug testing. I saw that they are an herbal substance, does it show up in drug testing.

Ben Leingang: I understand that there are tests out for these two substances, but I'm not sure if the traditional drug testing for employers cover those items or not. I know that probation and parole have these tests and are using them on the inmates or people that they are supervising.

Rep. Delmore: Are you aware of how many states are currently covering these drugs and making sure that they aren't out there and being offered to people, making them illegal.

Ben Leingang: I am not.

Chairman DeKrey: Thank you. Further testimony in support.

Charlene Schweitzer, Forensic Scientist, ND Office of Attorney General: Support (see attached 3, she also referred to a diagram [which was held up by AG's office personnel]).

Rep. Delmore: Do we know if there would be any complications if people actually used these drugs as they were intended to be used for because of the chemical compounds that are in there.

Charlene Schweitzer: That's a good question. Right now, there have not been any human studies on these compounds. They are so new and just came into the market; the market was flooded and people are using them illicitly but there have been no medical studies. As of right now, the only reason for these substances to be used is for research purposes, like what Dr. Hoffman developed them for. In my estimation, Dr. Hoffman was looking for the CB2 receptor, which has the anti-inflammatory properties. These people are making the ones with the high CB1 receptor, which obviously affects the nervous system.

Rep. Koppelman: If some of these compounds haven't been identified yet and you're still in the learning curve of identifying them, how does this work if someone is charged with illegally selling or using some of these substances in terms of the scientific lab evidence supporting that charge, if you don't know for sure what the chemical make-up is.

Charlene Schweitzer: If there is not an authenticated standard out there for us to run on our instruments and under our conditions, we cannot confirm that it is that substance. As of now, we can make a tentative identification. We have been talking with a lot of other labs to see what they've seen. This is a new substance and in order for us to confirm and say that it is the substance, we do have to have an authenticated standard as with any other drug we report out. So that is going to be an issue, along with that, there may be some that we can only make a tentative identification at this point, but they may not be able to be prosecuted. It's the best approach to try and get ahead of the game.

Chairman DeKrey: Thank you. Further testimony in support of SB 2119. Testimony in opposition. We will close the hearing. We will take a look at SB 2119.

Rep. Delmore: I move a Do Pass.

Rep. Maragos: Second the motion.

14 YES 0 NO 0 ABSENT **DO PASS** **CARRIER: Rep. Koppelman**

Date: 3/7/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2119

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No Ø

Absent Ø

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2119, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2119 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2119

BOARD OF PHARMACY
State of North Dakota

Jack Dalrymple, Governor

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Laurel Haroldson, R.Ph.
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Bonnie J. Thom, R.Ph.
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Gayle D. Ziegler, R.Ph.
Fargo
William J. Grosz, Sc.D., R.Ph.
Wahpeton, Treasurer

Senate Bill No 2119
Senate Judiciary Committee
Fort Lincoln Room – State Capitol Bldg
9:00 AM – Wednesday - January 19th, 2011

Chairman Nething and members of the Senate Judiciary Committee, thank you for the opportunity to speak with you today.

Senate Bill No. 2119 is the biennial bill introduced by the State Board of Pharmacy to bring the Controlled Substances scheduling up-to-date with what the Food & Drug Administration [FDA] and Drug Enforcement Administration [DEA] have done over the past two years. This bill also adds some synthetic spice cannabinoids and two substances in the mephedrone class, which we have recently had trouble with in North Dakota.

The first addition you will see is on page 5 line 14, 5-Methoxy-N,N-Dimethyltryptamine I am including a copy of the Federal Register describing the DEA action on this substance. On page 6 line 17 we have changed some of the language to describe more explicitly the tetrahydrocannabinols derived from the plant materials of the genus Cannabis. On page 7 beginning on line 1 we have included a description of the synthetic cannabinoids, some of which were scheduled by the Board of Pharmacy under the rule making process and under a temporary placement by the DEA pending final action. I am including a copy of the rule and the Federal Register notice. Many of these substances were synthesized by a researcher named JW Huffman who has been responsible for most of the research on them in order to determine if there were any practical human drug uses for the products. I am including a copy of an article from Michelle Glinn, which describes some of the ways these products are used. This action also serves to move these substances from the rule into the statute. On page 8 line 14 through 18 we have mephedrone and similar substances, which we discovered were being abused and being injected intravenously by some young people in Bismarck who ended up in the hospital. These substances are stimulants. We initially assumed the substance used was mephedrone, but as you will see on the copy of the State Laboratory report it proved to be a slightly different substance, so we scheduled both of them. All of the above substances will be in Schedule I, as they have no approved medical use in the United States.

On page 11, line 13 is a drug called tapentadol, which is an approved drug and is being placed into Schedule II. I am including a copy of the Federal Register mirroring this action.

In Schedule III on page 18 line 1 is an effort to establish language to accommodate the generic versions of delta-9 tetrahydrocannabinol, which was originally marketed in a drug product Marinol and now as generics of that product come out there needs to be language to accommodate them.

In Schedule IV on page 19 line 9 you will see a drug, carisoprodol. This drug is currently widely used and is found in many of the drug seizures we have, along with other drugs. We do collect data on carisoprodol in the Prescription Drug Monitoring Program [PDMP] and DEA has published a Federal Register Notice of proposed rule making; therefore this drug will probably be scheduled before you meet again and it might be wise for North Dakota to schedule it now.

Also on page 19 on line 27 and on page 20 line 19 are two similar drugs which are usually used as pre-anesthetic agents. Fospropofol has been finally scheduled by the DEA and Propofol listed in a notice of proposed rule making which will probably be final very soon having gained quite a bit of notoriety in the death of a famous singer and I believe his doctor is being prosecuted for it's use. I am including the Federal Register Notices for those two drugs.

On page 21 line 19 and 20 you will see pentazocine and butorphanol, which had been previously scheduled, but have been moved to other substances section of the federal list and we are moving them there as well.

The last two changes that we have for you are on page 22 lines 4 and 27. Lacosamide has been scheduled by the DEA and we are matching that scheduling here. Again, I am including the Federal Register Notice.

Howard C Anderson, Jr, R.Ph.
Executive Director

Article 61-13
CONTROLLED SUBSTANCES

Chapter
61-13-01 Controlled Substances Schedules

Chapter 61-13-01
Controlled Substances Schedules

Section
61-13-01-01 Purpose and Scope
61-13-01-02 Definitions
61-13-01-03 Scheduling

61-13-01-01. Purpose and Scope. The purpose of this chapter is to schedule substances which have an actual or relative potential for abuse and which bear risk to the public health by unknown individuals using them by inhaling the smoke or vapors or by ingesting or injecting the substances.

History: Effective February 26, 2010
General Authority: NDCC 19-03.1-02, 19-03.1-05
Law Implemented: NDCC 19-03.1-02

61-13-01-02 Definitions. The definitions under this rule have the meaning as set forth in North Dakota Century Code Chapter 19-03.1 and 43-15.

History: Effective February 26, 2010
General Authority: NDCC 19-03.1-02, 19-03.1-05
Law Implemented: NDCC 19-03.1-02

61-13-01-03 Scheduling.

1. The following substances are hereby placed in Schedule I of the Controlled Substances Act North Dakota Century Code 19-03.1-05 Schedule I, subsection 5, hallucinogenic substances:

   a. CP 47,497 and homologues 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol)

   b. HU-210[(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol)].

   c. HU-211 (dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl(-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)

d. JWH-018 1-Pentyl-3(1-naphthoyl)indole

e. JWH-073 1-Butyl-3-(1-naphthoyl)indole.

2. The following substances are hereby placed in Schedule I of the Controlled Substances Act North Dakota Century Code 19-03.1-05 Schedule I, subsection 7, stimulant substances:

a. Mephedrone (2-methylamino-1-*p*-tolylpropan-1-one) also known as 4-methylmethcathinone (4-MMC), 4-methylephedrone.

b. 3,4-Methylenedioxypyrovalerone (MDPV)

History: Effective February 26, 2010
General Authority: NDCC 19-03.1-02, 19-03.1-05
Law Implemented: NDCC 19-03.1-02

Rules - 2009

FR Doc E9-20204[Federal Register: August 21, 2009 (Volume 74, Number 161)] [Proposed Rules] [Page 42217-42220] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr21au09 -12]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-331]

Schedules of Controlled Substances: Placement of 5-Methoxy-N,N- Dimethyltryptamine Into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of proposed rulemaking to place the substance 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT) and its salts into schedule I of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized as proposed, this action would impose the criminal sanctions and regulatory controls of schedule I substances under the CSA on the manufacture, distribution, dispensing, importation, exportation, and possession of 5-MeO-DMT.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before September 21, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-331" on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to **dea.diversion.policy@usdoj.gov**. Comments may also be sent electronically through **http://www.regulations.gov** using the electronic comment form provided on that site. An electronic copy of this document is also available at the **http://www.regulations.gov** website. DEA will accept electronic comments containing Microsoft Word, WordPerfect, Adobe PDF, or Excel files only. DEA will not accept any file format other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because http://www.regulations.gov terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Comments and Requests for Hearing

In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of **21 CFR 1308.44** and **1316.47**. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the regulations as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (**21 U.S.C. 811**)," may request a hearing.

21 CFR 1308.42. Please note that DEA may grant a hearing only "for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment or repeal of a rule issuable" pursuant to **21 U.S.C. 811(a)**. All correspondence regarding this matter should be submitted to the DEA using the address information provided above.

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at **http:/ /www.regulations.gov** and in the Drug

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Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the FOR FURTHER INFORMATION CONTACT paragraph.

Background

Explanation of 5-methoxy-N,N-dimethyltryptamine

5-MeO-DMT is related to the schedule I hallucinogen, N,N- dimethyltryptamine (DMT), in its chemical structure and pharmacological properties. 5-MeO-DMT also shares pharmacological similarities with several other schedule I hallucinogens such as 2,5-dimethoxy-4- methylamphetamine (DOM), lysergic acid diethylamide (LSD) and mescaline. In animal drug discrimination studies, DOM, LSD, mescaline, DMT, and alpha-methyltryptamine (AMT) fully substitute for the discriminative stimulus cue of 5-MeO-DMT. In in vitro receptor binding studies, 5-MeO-DMT, similar to DMT and other schedule I hallucinogens, binds to central serotonin 2 (5-HT2) receptors.

Studies show that the potencies of hallucinogens in humans correlate with their drug affinities for the 5-HT2 receptor and discriminative stimulus potencies. Accordingly, 5-MeO-DMT produces psychoactive effects in humans following inhalation (~6-20 mg), intravenous injection (~0.7-3.1 mg), sublingual (~10 mg), intranasal insufflation (~10 mg) and oral (~30 mg) (if encapsulated or taken with a monoamine oxidase inhibitor) routes of administration. Anecdotal reports from humans who have used 5-MeO-DMT describe hallucinogenic effects similar to those produced by DMT. 5-MeO-DMT, however, is reported to be 4 to 5-fold more potent than DMT when administered by inhalation, sublingual or oral (if encapsulated) routes of administration.

Control of 5-methoxy-N,N-dimethyltryptamine

Evidence of the abuse of 5-MeO-DMT was first reported in 1999 by federal law enforcement personnel. According to the System to Retrieve Information on Drug Evidence (STRIDE), a federal database for seized drug exhibits analyzed by DEA laboratories, from January 1999 to December 2008, law enforcement seized 33 drug exhibits and filed 23 cases pertaining to the trafficking, distribution and abuse of 5-MeO- DMT. The seized drug exhibits comprised 89 grams of powder and 10 milliliters of liquid containing 5-MeO-DMT. Since 2004, National Forensic Laboratory Information System (NFLIS), a database for drug cases analyzed by federal, state and local forensic laboratories, registered 23 state and local cases involving 27 analyzed items containing 5-MeO-DMT.

There is evidence of clandestine laboratory operations to synthesize 5-MeO-DMT. 5-MeO-DMT has been encountered in powder, capsule, and liquid forms. 5-MeO-DMT is typically abused either by smoking or insufflating the powder. Investigations by federal law enforcement indicate that individuals, especially

youths and young adults, are purchasing 5-MeO-DMT from Internet-based chemical suppliers. In addition, there are several instances where 5-MeO-DMT was sold as a counterfeit of MDMA.

The risks to the public health associated with the abuse of 5-MeO- DMT are similar to the risks associated with those of schedule I hallucinogens. 5-MeO-DMT can pose serious health risks to the user and general public through its ability to induce hallucinogenic effects and other sensory distortions and impaired judgment. Self-reports that are posted on Internet websites describe the abuse of this substance in combination with other controlled drugs such as DMT, N,N- diethyltryptamine (DET), LSD, marijuana, ecstasy, or mushrooms (contains psilocybin and psilocin). This practice of drug abuse involving combinations can pose additional health risks to the users and the general public. These data show that the continued trafficking and abuse of 5-MeO-DMT pose hazards to the public health and safety. Indeed, there have been reports of emergency room admissions and death associated with the abuse of 5-MeO-DMT.

There are no FDA-approved drug products. 5-MeO-DMT has never been approved by the FDA for marketing as a human drug product in the United States and there are no recognized therapeutic uses of 5-MeO-DMT in the United States.

References to the above studies and data may be found in the Health and Human Services scheduling recommendation and DEA's independent analysis, both of which are available on the electronic docket associated with this rulemaking.

Placement of 5-MeO-DMT Into Schedule I

In accordance with 21 U.S.C. 811(b) of the CSA, DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse of 5-MeO-DMT. On February 21, 2007, the Deputy Administrator of the DEA submitted these data to the Acting Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Deputy Administrator also requested a scientific and medical evaluation and a scheduling recommendation for 5-MeO-DMT from the Acting Assistant Secretary for Health. On December 18, 2008, the Principal Deputy Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of the DEA a scientific and medical evaluation and a letter recommending that 5-MeO-DMT and its salts be placed into schedule I of the CSA. Enclosed with the letter was a document prepared by FDA entitled, "Basis for the recommendation to Control 5-Methoxy- Dimethyltryptamine (5-MeO-DMT) in Schedule I of the Controlled Substances Act." The document contained a review of the factors which the CSA requires the

[[Page 42219]]

Secretary to consider (21 U.S.C. 811(b)). The factors considered by the Assistant Secretary of Health and DEA with respect to 5-MeO-DMT were:

(1) Actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects, if known;

(3) The state of current scientific knowledge regarding the drug;

(4) History and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under the CSA.

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (**21 U.S.C. 811**(b)), and the independent review of the available data by DEA, the Deputy Administrator finds that sufficient data exist to support the placement of 5-MeO-DMT into schedule I of the CSA pursuant to **21 U.S.C. 811**(a). The specific findings required pursuant to **21 U.S.C. 811** and **812** for 5 -MeO-DMT to be placed into schedule I are as follows:

(1) 5-MeO-DMT has a high potential for abuse.

(2)5-MeO-DMT has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of 5-MeO-DMT under medical supervision.

Regulatory Requirements

If this rule is finalized as proposed, 5-methoxy-N,N- dimethyltryptamine would be subject to regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importation and exportation of a schedule I controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports or exports 5-methoxy-N,N-dimethyltryptamine or who engages in research or conducts instructional activities with respect to 5-methoxy-N,N-dimethyltryptamine, or who proposes to engage in such activities, would be required to submit an application for schedule I registration in accordance with **part 1301 of Title 21** of the Code of Federal Regulations.

Security. 5-methoxy-N,N-dimethyltryptamine would be subject to schedule I security requirements and must be manufactured, distributed and stored in accordance with Sec. **Sec. 1301.71; 1301.72(a), (c), and (d); 1301.73; 1301.74; 1301.75(a) and (c); and 1301.76** of Title 21 of the Code of Federal Regulations.

Labeling and Packaging. All labels and labeling for commercial containers of 5-methoxy-N,N-dimethyltryptamine which are distributed on or after the effective date of a Final Rule finalizing this regulation would be required to comply with requirements of Sec. Sec. **1302.03 through 1302.07** of Title 21 of the Code of Federal Regulations.

Quotas. Quotas for 5-methoxy-N,N-dimethyltryptamine would be established pursuant to the requirements of **part 1303** of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of 5-methoxy-N,N-dimethyltryptamine upon the effective date of any Final Rule finalizing these regulations would be required to keep an inventory of all stocks of the substance on hand pursuant to Sec. Sec. 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in schedule I to handle 5-methoxy-N,N-dimethyltryptamine would be required to conduct an inventory of all stocks of the substance.

Records. All registrants who handle 5-methoxy-N,N- dimethyltryptamine would be required to keep records pursuant to **Sec. Sec. 1304.03, 1304.04 1304.21, 1304.22, and 1304.23** of Title 21 of the Code of Federal Regulations.

Reports. All registrants required to submit reports in accordance with Sec. 1304.33 of Title 21 of the Code of Federal Regulations would be required to do so regarding 5-methoxy-N,N-dimethyltryptamine.

Order Forms. All registrants involved in the distribution of 5- methoxy-N,N-dimethyltryptamine would be required to comply with the order form requirements of **part 1305** of Title 21 of the Code of Federal Regulations.

Importation and Exportation. All importation and exportation of 5- methoxy-N,N-dimethyltryptamine would be required to be in compliance with **part 1312** of Title 21 of the Code of Federal Regulations.

Criminal Liability. Any activity with 5-methoxy-N,N- dimethyltryptamine not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after the effective date of any Final Rule finalizing these regulations would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This proposed rule, if finalized, would place 5-methoxy-N,N-dimethyltryptamine into schedule I of the Controlled Substances Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws.

Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign

[[Page 42220]]

based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (**21 U.S.C. 811**(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that **21 CFR part 1308** be amended as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: **21 U.S.C. 811, 812, 871**(b) unless otherwise noted.

Section **1308.11** is amended by:

A. Redesignating existing paragraphs (d)(15) through (d)(34) as paragraphs (d)(16) through (d)(35).

B. Adding a new paragraph (d)(15).

Sec. 1308.11 Schedule I.

* * * * *

(d) * * *

(15) 5-methoxy-N,N-dimethyltryptamine, its isomers, salts and salts of isomers--7431.

Some trade or other names: 5-methoxy-3-[2- (dimethylamino)ethyl]indole; 5-MeO-DMT. * * * * *

Dated: August 12, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-20204 Filed 8-20-09; 8:45 am]

Physiological Effects of K2

Michele Glinn, Ph.D., D.A.B.F.T
MSP Forensic Sciences Division, Toxicology Unit

Methods for detection of cannabinoids in biological samples have been well-established for decades. Immunoassay screens from dipsticks to fully automated analyzers are used by hospitals, probation departments, crime labs and others. A drug that has the same effects as marihuana, but is not controlled, and not detectable by the usual methods has its obvious attractions - hence the recent rise in popularity of synthetic cannabinoids.

What exactly are they? They are cannabinoid receptor agonists, mostly produced during research into cannabinoid receptor function or during the development of antiemetic or analgesic drugs. The most common are known as JWH-018 and JWH-073, and were originally synthesized by JW Huffman at Clemson University. Also known are HU-210, from Hebrew University, CP-47497 from Pfizer and several other related compounds. These chemicals have been obtained or produced by clandestine chemists, who spray them on dried plant material and sell them as incense or potpourri under names like Spice and K2. The price, $40 for 3 grams, is roughly comparable to that of mid-grade marihuana[1]. None of them are structurally related to cannabinoids, and none cross-react with current commercial cannabinoid immunoassays.

In addition to knowing what these compounds are, it is essential to understand their effects on function and their metabolic and excretion profiles. For effects, we can turn to the internet, where anecdotal reports are numerous[2]. Experiences are variable. Many users say the high is milder and the side effects, including rapid heartbeat, dysphoria (paranoia) and joint aches, more intense. Others report a high very similar to cannabis itself. Duration also varies: some users find it lasts longer than cannabis, others that it ends abruptly. The attraction for most is not that it's a better drug than marihuana, but that it's legal.

One of the first scientific reports to appear on Spice was published on-line in 2009 in the Journal of Mass Spectrometry by Auwarter et al of the University Medical Center in Freiburg, Germany[3]. In one of the oldest (if not the finest) traditions of biological research, two of the authors experimented on themselves and shared a cigarette containing 0.3 gm of Spice Diamond. They reported "considerably reddened conjunctivae, significant increase of pulse rates, xerostomia and an alteration of mood and perception." There were no psychomotor abnormalities noted, but the subjects felt impaired, and had hangover effects throughout the next day. Analysis of the herbal material showed the presence of JWH-018, CP-47497, and two compounds which were not conclusively identified but appeared to be related to the latter. One of the related compounds was also found in the subjects' blood.

The Toxicology Unit of the Michigan State Police (MSP) Forensic Sciences Division, in conjunction with Drug Recognition Experts (DREs) Sgt. Perry Curtis of the MSP Traffic Services Section, and Ofc. Jeramey Peters of the Auburn Hills Police Department, undertook a study on the physiological effects of synthetic cannabinoids. The Toxicology Unit was given two lots of K2 obtained from head shops in East Lansing

and Auburn Hills. We extracted the active compounds from the herbal material with methylene chloride. The procedure was simple and gave consistent results, most likely because the compounds were simply applied to the surface of the plant material, and did not have to be isolated from the cellular components as is the case with THC. Analysis of the extracts by GC/MS showed that the active ingredients in both samples were JWH-018 and JWH-073 (Figures 1 - 2)[3,4]. No other compounds were found. As expected, none of the extracts cross-reacted with the cannabinoid panel of our laboratory's immunoassay screen (Randox Evidence).

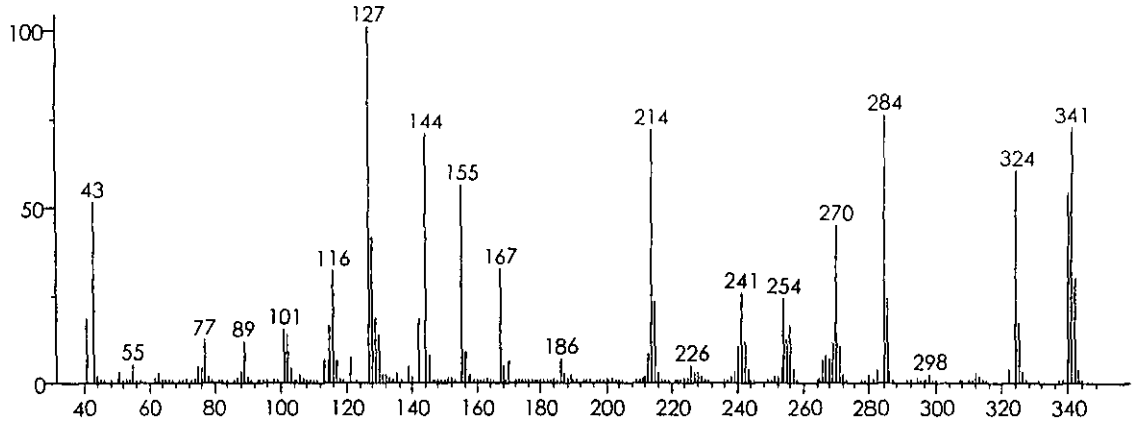

Fig. 1: GC/MS spectrum of JWH-018 extracted from K2 herbal material.

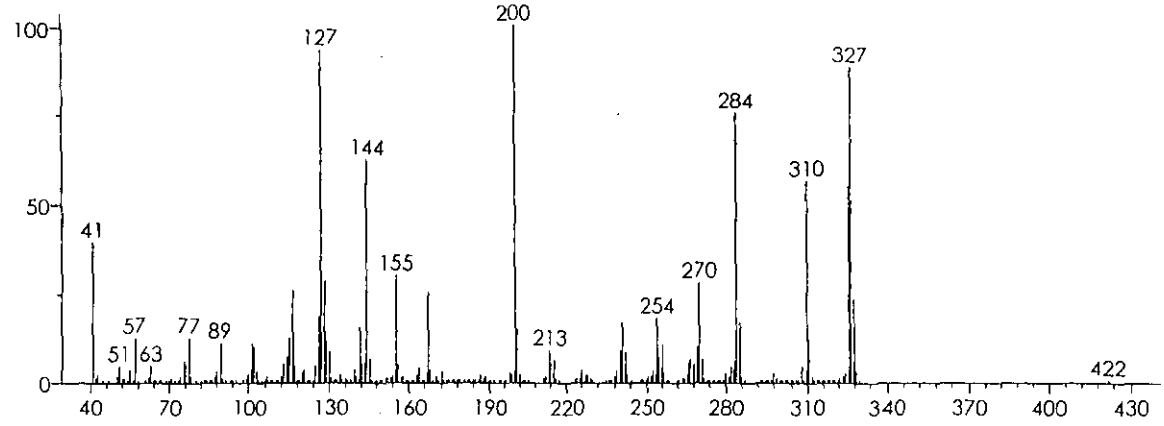

Figure 2: GC/MS spectrum of JWH-073 extracted from K2 herbal material.

Sgt. Curtis and Ofc. Peters then dosed a subject with the Auburn Hills lot of K2 as part of a plea agreement. The subject was a regular THC and K2 user, but had not used either substance in the five days before the exam. He completed a physical and DRE evaluation. Findings were normal. He was then given a bag of K2, rolled one cigarette estimated at 1.5 grams, and smoked it. Afterwards, he was taken to the booking area and completed a second DRE evaluation. Findings:

Parameter	**Pre-Dose**	**Pose-Dose**
One Leg Stand	No errors	Swayed, bent knees, leaned, nearly fell
Walk-and-Turn	One error during turn	Incorrect turn, more deliberate steps
Romberg	No sway	Visible sway
Finger to Nose	Problems locating tip of nose	Did better than pre-dose
Nystagmus	None present	None present
Convergence	Normal	Left eye unable to converge
Pupils	6.5 mm	6.5 mm Slowed reaction to light, rebound dilation
Eyes	Normal	Bloodshot, droopy
Eyelids	Normal	Tremors
Muscle	Normal	Tremors; tone normal
Pulse Rate	98	114
Blood Pressure	150/104	148/102
Temperature	98.8	99.5; skin warm to touch

Post-dose, the subject had increased body temperature and pulse rate, muscle tremors and distinctive opticokinetic symptoms. Although the subject's temperature was elevated, he reported that he did not feel warm. He completed the SFSTs as instructed, although it seemed to take greater effort than the same tasks pre-dose. He also stated that K2 was addicting and had mind altering and "bizarre" effects. The DREs' conclusions: the effects of JWH-18 and JWH-073 are similar to those of THC and the dissociative anaesthetics. They noted that the subject is a regular user of K2 and may have developed some tolerance; SFST performance might be poorer in a first-time user.

Blood and urine samples were taken before smoking and 30 minutes after the end of smoking, and sent to the MSP Toxicology Unit for analysis. The samples were analyzed using the laboratory's customary immunoassay screening and GC/MS confirmation procedures. No synthetic cannabinoids were seen in the pre-dose specimens. However, JWH-018 and JWH-073 were seen in both blood and urine post-dose. Both peaks were present at a higher intensity in blood than in urine, which may have been a result of the urine collection so soon after the cessation of smoking.

Conclusions: the active ingredients of two varieties of K2 sold in East Lansing and Auburn Hills are JWH-018 and JWH-073. These compounds are not detectable by our lab's immunoassay screen, but can be identified by GC/MS. Blood levels of both 30 minutes after one cigarette appear to be in the low ng/ml range. Physiological effects are similar to those of cannabis and the dissociative anasthetics.

Epilogue: A bill currently under consideration by the Michigan Legislature would make synthetic cannabinoids, including JWH-018 and JWH-073, Schedule I controlled substances. The medical marihuana business, however, is prospering. It remains to be seen how the relative popularity of these two substances changes with alterations in their legal status.

References

1. http://norml.org
2. http://www.erowid.org
3. http://onlinelibrary.wiley.com/doi/10.1002/jms.1558/abstract
4. Lindigkeit et al, *For. Sci. Int.*, 191(2009):58-63.

U.S. Department of Justice Drug Enforcement Admi

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Home
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Drugs and Chemicals of Concern

Spice Cannabinoid

- **CP 47,497 and homologues**
  2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol)
- **HU-210**
  [(6a*R*,10a*R*)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c] chromen-1-ol)]
- **HU-211**
  (dexanabinol, (6a*S*,10a*S*)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl) -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)
- **JWH-018**
  1-Pentyl-3-(1-naphthoyl)indole
- **JWH-073**
  1-Butyl-3-(1-naphthoyl)indole

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Rules - 2010

[Federal Register: November 24, 2010 (Volume 75, Number 226)]
[Proposed Rules]
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[DOCID:fr24no10-45]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-345N]

Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I

AGENCY: Drug Enforcement Administration (DEA), U.S. Department of Justice.

ACTION: Notice of Intent.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place five synthetic cannabinoids into the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions under **21 U.S.C. 811**(h) of the CSA. The substances are 1-pentyl-3-(1-naphthoyl)indole (JWH-018), 1-butyl-3-(1-naphthoyl)indole (JWH-073), 1-[2-(4- morpholinyl) ethyl]-3-(1-naphthoyl)indole (JWH-200), 5-(1,1- dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP -47,497 C8 homologue). This intended action is based on a finding by the DEA Deputy

[Page 71636]]

Administrator that the placement of these synthetic cannabinoids into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose criminal sanctions and regulatory controls of Schedule I substances under the CSA on the manufacture, distribution, possession, importation, and exportation of these synthetic cannabinoids.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, telephone (202) 307-7183, fax (202) 353-1263, or e-mail **ode@dea.usdoj.gov**.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473), which was signed into law on October 12, 1984, amended section 201 of the CSA (**21 U.S.C. 811**) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. The Attorney General may extend the temporary scheduling up to six months. A substance may be temporarily scheduled under the emergency provisions of the CSA if it is not listed in any other schedule under section 202 of the CSA (**21 U.S.C. 812**) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA (28 CFR 0.100). The Administrator has redelegated this function to the Deputy Administrator, pursuant to 28 CFR, appendix to subpart R, section 12.

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the Deputy Administrator to notify the Assistant Secretary for Health, delegate of the Secretary of Health and Human Services, of her intention to temporarily place a substance into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification, including whether there is an exemption or approval in effect for the substance in question under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published.

In making a finding that placing a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Deputy Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: (4) History

and current pattern of abuse; (5) The scope, duration and significance of abuse; and (6) What, if any, risk there is to the public health.

Synthetic Cannabinoids

Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system. No legitimate non-research uses have been identified for these synthetic cannabinoids. They have not been approved by the U.S. Food and Drug Administration for human consumption. These THC-like synthetic cannabinoids, 1-pentyl-3-(1-naphthoyl)indole (JWH-018), 1-butyl-3-(1- naphthoyl)indole (JWH-073), 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl)indole (JWH-200), 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3- hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue), are so termed for their THC-like pharmacological properties. Though they have similar properties to delta-9-tetrahydrocannabinol (THC) found in marijuana and have been found to be more potent than THC in animal studies. Numerous herbal products have been analyzed and JWH-073, JWH-018, JWH-200, CP-47,497, and cannabicyclohexanol have been identified in varying mixture profiles and amounts spiked on plant material.

Factor 4. History and Current Pattern of Abuse

The emergence of these synthetic cannabinoids represents a recent phenomenon in the designer drug market. Since the initial identification of JWH-018 in December 2008, many additional synthetic cannabinoids with purported psychotropic effects have been identified in related products. The popularity of these THC-like synthetic cannabinoids has greatly increased in the United States and they are being abused for their psychoactive properties. Primarily found laced on plant material, these synthetic cannabinoids are also being abused alone as self-reported on Internet discussion boards. This abuse has been characterized by both acute and long term public health and safety problems. Even though there is no accepted use for these synthetic cannabinoids, multiple shipments of JWH-018 and JWH-073 have been intercepted by U.S. Customs and Border Protection in 2010, with one being in excess of 50 kilograms. Additionally, bulk loads of JWH-018 and JWH-200 have been seized by law enforcement in 2010. In Casper, Wyoming, products seized in a raid, which were laced with synthetic cannabinoids, were found in conjunction with illicit drugs.

The products containing these THC-like synthetic cannabinoids are marketed as "legal" alternatives to marijuana and are being sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores. These synthetic cannabinoids alone or spiked on plant material have the potential to be extremely harmful due to their method of manufacture and high pharmacological potency. DEA has been made aware that smoking these synthetic cannabinoids for the purpose of achieving intoxication and experiencing the psychoactive effects is identified as a reason for emergency room visits and calls to poison control centers.

As of October 15, 2010, 15 states in the United States, European and Scandinavian countries have controlled one or more of the synthetic cannabinoids DEA is temporarily scheduling here.

Factor 5. Scope, Duration and Significance of Abuse

According to forensic laboratory reports, the first appearance of these synthetic cannabinoids in the United States occurred in November 2008, when U.S. Customs and Border Protection analyzed "Spice" products. From January 2010 through September 2010, the National Forensic Laboratory Information System, a national repository of drug evidence analyses from forensic laboratories across the United States, reported over 500 exhibits relating to these synthetic cannabinoids from various States including Alabama, Arkansas, California, Florida, Hawaii, Iowa, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Missouri, North Dakota, Nebraska, Nevada, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Virginia. Additionally, the American Association of Poison Control Centers (AAPCC) has reported receiving over 1,500 calls as of September 27, 2010, relating to products spiked with these synthetic cannabinoids from 48 states and the District of Columbia.

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Factor 6. What, if Any, Risk There Is to the Public Health

JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol share pharmacological similarities with the Schedule I substance THC. Health warnings have been issued by numerous state public health departments and poison control centers describing the adverse health effects associated with these synthetic cannabinoids and their related products including agitation, anxiety, vomiting, tachycardia, elevated blood pressure, seizures, hallucinations and non-responsiveness. Case reports describe psychotic episodes, withdrawal, and dependence associated with use of these synthetic cannabinoids, similar to syndromes observed in cannabis abuse. Emergency room physicians have reported admissions connected to the abuse of these synthetic cannabinoids. Additionally, when responding to incidents involving individuals who have reportedly smoked these synthetic cannabinoids, first responders report

that these individuals suffer from intense hallucinations. Detailed chemical analysis by DEA and other investigators have found these synthetic cannabinoids spiked on plant material in products marketed to the general public. The risk of adverse health effects is further increased by the fact that similar products vary in the composition and concentration of synthetic cannabinoids(s) spiked on the plant material.

Self-reported abuse of these THC-like synthetic cannabinoids alone and spiked on plant material appear on Internet discussion boards. According to self-reports, these substances are cannabis-like (or THC- like) in their psychoactive effects and are more potent than THC in this regard. The most common route of administration of these synthetic cannabinoids is by smoking, using a pipe, water pipe, or rolling the drug-spiked plant material in cigarette papers.

The marketing of products that contain one or more of these synthetic cannabinoids is geared towards teens and young adults. Despite disclaimers that the products are not intended for human consumption, retailers promote that routine urinalysis tests will not typically detect the presence of these synthetic cannabinoids.

Furthermore, a number of the products and synthetic cannabinoids appear to originate from foreign sources and are manufactured in the absence of quality controls and devoid of regulatory oversight. These products and associated synthetic cannabinoids are readily accessible via the Internet.

DEA has considered the three criteria for placing a substance into Schedule I of the CSA (**21 U.S.C. 812**). The data available and reviewed for JWH-073, JWH-018, JWH-200, CP-47,497, and cannabicyclohexanol indicate that these synthetic cannabinoids each have a high potential for abuse, no currently accepted medical use in treatment in the United States and are not safe for use under medical supervision.

Based on the above data, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol pose an imminent hazard to the public safety. DEA is not aware of any recognized therapeutic uses of these synthetic cannabinoids in the United States. As required by section 201(h)(4) of the CSA (**21 U.S.C. 811**(h)), the Deputy Administrator in a letter dated October 6, 2010, notified the Assistant Secretary of Health of the intention to temporarily place five synthetic cannabinoids in Schedule I.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Deputy Administrator has considered the available data and the three factors required to support a determination to temporarily schedule five synthetic cannabinoids: 1- butyl-3-(1-naphthoyl)indole, 1-pentyl-3-(1-naphthoyl)indole, 1-[2-(4- morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2- [(1R,3S)-3-hydroxycyclohexyl]-phenol, and 5-(1,1-dimethyloctyl)-2- [(1R,3S)-3-hydroxycyclohexyl]-phenol in Schedule I of the CSA and finds that placement of these synthetic cannabinoids into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Because the Deputy Administrator finds that it is necessary to temporarily place these synthetic cannabinoids into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication of the order in the **Federal Register**. JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol will be subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, possession, importing and exporting of a Schedule I controlled substance under the CSA. Further, it is the intention of the Deputy Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this notice and the date that notification was transmitted to the Assistant Secretary for Health.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action provides a notice of intent to temporarily place 1-butyl-3-(1-naphthoyl)indole, 1-pentyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3- hydroxycyclohexyl]-phenol into Schedule I of the CSA. DEA is not aware of any legitimate non-research uses for these synthetic cannabinoids in the United States.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $126,400,000 or more (adjusting for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on

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competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign- based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Deputy Administrator of the DEA by Department of Justice regulations (28 CFR 0.100, and section 12 of the Appendix to Subpart R), the Deputy Administrator hereby intends to order that 21 CFR part 1308 be amended as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11 is amended by adding new paragraphs (g)(1), (2), (3), (4), and (5) to read as follows:

Sec. 1308.11 Schedule I.

* * * * *

(g) * * *

~~(1)~~ 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol- 7297
(Other names: CP-47,497)

~~(2)~~ 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol- 7298
(Other names: cannabicyclohexanol and CP-47,497 C8 homologue)

~~(3)~~ 1-Butyl-3-(1-naphthoyl)indole-7173
(Other names: JWH-073)

~~(4)~~ 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole-7200
(Other names: JWH-200)

~~(5)~~ 1-Pentyl-3-(1-naphthoyl)indole-7118
(Other names: JWH-018 and AM678)

Dated: November 15, 2010.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. 2010-29600 Filed 11-23-10; 8:45 am]

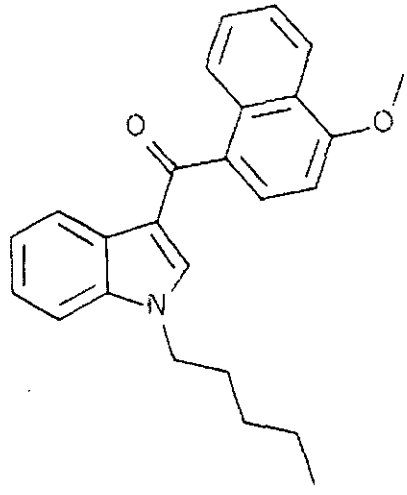
BILLING CODE 4410-09-P

JWH-081

From Wikipedia, the free encyclopedia

JWH-081 is an analgesic chemical from the naphthoylindole family, which acts as a cannabinoid agonist at both the CB_1 and CB_2 receptors.[1] It is fairly selective for the CB_1 subtype, with affinity at this subtype approximately 10x the affinity at CB_2.[2] It was discovered and named after Dr. John W. Huffman.

JWH-081



Systematic (IUPAC) name

4-methoxynaphthalen- 1-yl- (1-pentylindol- 3-yl)methanone

Identifiers	
CAS number	210179-46-7
ATC code	?
PubChem	CID 10547208
Chemical data	
Formula	$C_{25}H_{25}NO_2$
Mol. mass	371.47 g/mol
SMILES	eMolecules & PubChem
Therapeutic considerations	
Pregnancy cat.	?
Legal status	Legal

See also

- JWH-018
- JWH-098
- JWH-164
- JWH-210

References

1. ^ Aung MM, Griffin G, Huffman JW, Wu MJ, Keel C, Yang B, Showalter VM, Abood ME, Martin BR. Influence of the N-1 alkyl chain length of cannabimimetic indoles upon CB_1 and CB_2 receptor binding. *Drug and Alcohol Dependence* 2000; 60:133-140.
2. ^ Huffman JW, Zengin G, Wu MJ, Lu J, Hynd G, Bushell K, Thompson ALS, Bushell S, Tartal C, Hurst DP, Reggio PH, Selley DE, Cassidy MP, Wiley JL, Martin BR. Structure–activity relationships for 1-alkyl-3-(1-naphthoyl)indoles at the cannabinoid CB_1 and CB_2 receptors: steric and electronic effects of naphthoyl substituents. New highly selective CB_2 receptor agonists. *Bioorganic and Medicinal Chemistry*. 2005; 13:89-112.

Retrieved from "http://en.wikipedia.org/wiki/JWH-081"
Categories: Cannabinoids | Naphthoylindoles | Phenol ethers | Cannabinoid stubs

Drugs and Chemicals of Concern

4-methylmethcathinone
[Mephedrone, 4-MMC, meow meow, m-CAT, bounce, bubbles, mad cow]

July 2010
DEA/OD/ODE

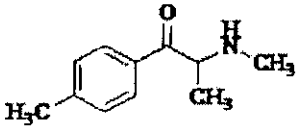
Introduction

4-Methylmethcathinone (mephedrone) is a designer drug of the phenethylamine class and shares substantial structural similarities with methcathinone (Schedule I). Evidence of mephedrone use and associated toxicity has been increasing, in 2009 and 2010, particularly in the United Kingdom and other European countries. To date, one confirmed and several suspected deaths related to mephedrone have been reported by Europol-EMCDDA Joint report on mephedrone 2010. In recent years, law enforcement agencies have documented seizures (Oregon, Illinois and Alabama) associated with mephedrone in the United States.

Licit Uses

Mephedrone is not approved for medical use in the United States.

Chemistry



4-Methylmethcathinone
Molecular Formula: C11H15NO

The core chemical structure of mephedrone identifies it as a phenethylamine, and is related in chemical structure to methcathinone differing only by a methyl group (CH3) on the ring. It is a solid at room temperature.

Pharmacology

Structure-activity relationship studies allow to predict that the pharmacology of mephedrone is similar to methcathinone as well as other substances of phenethylamine chemical class. The compounds having similar structure (e.g., methamphetamine, methylone, 3,4-methylenedioxymethamphetamine, cathinone and methcathinone) have been used to assess the pharmacological profile of mephedrone. This class of compounds is known to produce central nervous system stimulation, psychoactivity and hallucinations.

The adverse health effects caused by mephedrone are broadly similar to those seen with other stimulant drugs. Adverse effects produced by phenethylamines are increased heart rate, chest pain, agitation, irritability, dizziness, delusions, nose bleeding, nausea and vomiting. Consistent with the above discussion, mephedrone was reported to produce agitation, dilated pupils, increased heart rate and blood pressure in a 22-year-old man who used it for recreational purpose.

User Population

It is predominantly used by youth population (15-24 years), higher in males than females, from urban areas, who frequent clubs, discos and dance events (Europol-EMCDDA Joint report on Mephedrone, 2010).

Illicit Distribution

Mephedrone is sold over the internet and is promoted as a "research chemical", "bath salts" or "plant food."

Control Status

Mephedrone is not scheduled under Controlled Substance Act (CSA). However, it can be considered an analogue of methcathinone (schedule I substance) under the analogue provision of the CSA (Title 21 United States Code 813). Therefore, law enforcement cases involving mephedrone can be prosecuted under the Federal Analog Act of the CSA.

OFFICE OF ATTORNEY GENERAL
Crime Laboratory Division
2641 East Main Avenue
Bismarck, ND 58501-5044

Tel. (701) 328-6159
(800) 296-2054
Fax (701) 328-6185

LABORATORY REPORT

Case Number: 10-00787

Report Date: 02/25/2010
Report To: Bismarck Police Department
Dean Clarkson

Submitting Agency: Bismarck Police Department
Agency Case Number: 10-2895

Evidence Submitted:

1 One sealed plastic bag containing one "Star Dust" package containing one small ziplock bag containing off-white powder. (1)

Summary of Analysis:

Item	Submitted	Substance Found
1	1.07 grams	Tentatively Identified as 3,4-Methylenedioxypyrovalerone (MDPV), Lidocaine, and Mannitol

Note: The identification of the 3,4-Methylenedioxypyrovalerone (MDPV) is tentative due to the lack of an authenticated reference standard.

Sincerely,

Crime Laboratory Division

Chris Focke
Forensic Scientist

Rules 2009

FR Doc E9-11933[Federal Register: May 21, 2009 (Volume 74, Number 97)] [Rules and Regulations] [Page 23790-23793] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr21my09-2]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-319F]

Schedules of Controlled Substances: Placement of Tapentadol Into Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance tapentadol, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, into schedule II of the

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Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of schedule II will be applicable to the manufacture, distribution, dispensing, importation, and exportation of tapentadol and products containing tapentadol.

DATES: Effective Date: June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2008, the Food and Drug Administration (FDA) approved tapentadol for marketing in the United States as a prescription drug product for the treatment of moderate-to-severe acute pain. Tapentadol is a new molecular entity with centrally-acting analgesic properties.

Tapentadol has dual modes of action, namely mu ([mu]) opioid receptor agonistic action and inhibition of reuptake of norepinephrine at the norepinephrine transporter. The chemical name of its monohydrochloride salt form is 3-[(1R,2R)-3-(dimethylamino)-1-ethyl-2- methylpropyl]phenol hydrochloride. Tapentadol shares substantial pharmacological effects and abuse potential with other schedule II opioid analgesics, e.g., morphine, oxycodone, and hydromorphone. Since tapentadol is a new molecular entity, there has been no evidence of diversion, abuse, or law enforcement encounters involving the drug.

On November 13, 2008, the Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that tapentadol be placed into schedule II of the CSA. Enclosed with the November 13, 2008, letter was a document prepared by the Food and Drug Administration (FDA) entitled, "Basis for the Recommendation for Control of Tapentadol in Schedule II of the Controlled Substances Act." The document contained a review of the factors which the CSA requires the Secretary to consider (**21 U.S.C. 811**(b)).

After a review of the available data, including the scientific and medical evaluation and the scheduling recommendation from DHHS, the Deputy Administrator of the DEA published a Notice of Proposed Rulemaking entitled "Schedules of Controlled Substances: Placement of Tapentadol into Schedule II" on February 17, 2009 (74 FR 7386), which proposed placement of tapentadol into schedule II of the CSA. The proposed rule provided an opportunity for all interested persons to submit their written comments on or before March 19, 2009.

Comments Received

The DEA received three comments in response to the Notice of Proposed Rulemaking. One comment was from a consulting firm, one comment was from a concerned citizen, and the last comment was from a company which does research and development on pharmaceutical drugs.

The first commenter recommended that the DEA expedite the issuance and effective date of the Final Rule placing tapentadol in schedule II. The commenter stated that tapentadol will provide a safe and effective substitute for other schedule II analgesics and that the conditions of public health necessitate and justify this request. In response, DEA believes that providing 30 days for this rule to become effective is both expeditious and sufficient to allow handlers to apply for registration with DEA and to comply with the regulatory requirements for handling schedule II controlled substances.

A second commenter stated that since tapentadol induces effects similar to oxycodone and morphine, both schedule II substances, then it should be placed in schedule II of the Controlled Substances Act based on tapentadol's abuse potential. Thus, the commenter agreed with DHHS' recommendation and the action proposed by DEA. No response from DEA is necessary to this comment because it is consistent with the DEA's final action.

The third commenter had four questions/comments regarding the implementation of this Final Rule. Each question/comment is addressed below.

The commenter requested that DEA registrants be allowed enough time to make the changes needed to carry out handling tapentadol as a schedule II substance, as dictated in **21 CFR 1301.51, 1301.71**, and **1304.04**. In response to this comment, the effective date of the Final Rule placing tapentadol in schedule II of the Controlled Substances Act will be thirty (30) days from the date of publication of the Final Rule, thus allowing ample time for those that wish to handle tapentadol to meet DEA regulatory requirements for handling schedule II substances. It has been DEA's experience that this is sufficient time to meet the regulatory requirements provided below.

The commenter asked if quantities of tapentadol held by a DEA registrant would have to be reported once the scheduling of tapentadol as a schedule II substance was finalized. In response, the reporting and recordkeeping requirements for handling schedule II substances can be found in 21 CFR part 1304. Specifically, **21 CFR 1304.11**(b) states that "Every person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing of controlled substances * * *" In order for a manufacturer to handle a schedule II substance, a manufacturing or procurement quota has to be requested in accordance with the requirements of **21 U.S.C. 826**(c) and **21 CFR part 1303.** The manufacturer's inventory of the substance is used, in part, to determine the manufacturer's quota.

The commenter asked about the process for adding the CSA drug code for tapentadol to their registration. In response, the regulatory process required to obtain a DEA registration is outlined generally in **21 CFR 1301.11 through 1301.19**, and the process required to modify an existing DEA registration is outlined in 21 CFR 1301.51. Information relating to registration may be found on the Internet, http://www.DEAdiversion.usdoj.gov, or by contacting DEA's Registration Call Center, toll free at 1-800-882-9539.

Finally, the commenter inquired about the process for establishing an NDC number for tapentadol with the Automation of Reports and Consolidated Orders System (ARCOS). National Drug Code (NDC) numbers are assigned by the Food and Drug Administration (FDA) in conjunction with registration and drug listing requirements of the Federal Food, Drug, and Cosmetic Act. Accordingly, a person manufacturing a product containing tapentadol must obtain an NDC number from FDA in accordance with 21 CFR 207.35. Once the drug code for tapentadol is added to an existing manufacturer's registration or a new registration is issued to an applicant, then that DEA-registered manufacturer must provide the DEA's ARCOS Unit with its established NDC number for their product containing tapentadol. Once that information is obtained, it can be used to report ARCOS reportable transactions pursuant to **21 CFR 1304.33**.

Scheduling of Tapentadol

Based on the recommendation of the Assistant Secretary for Health, received

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in accordance with Sec. 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, and after a review of the comments received in response to the Notice of Proposed Rulemaking, the Deputy Administrator of DEA, pursuant to Sec. Sec. 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Tapentadol has a high potential for abuse;

(2) Tapentadol has a currently accepted medical use in treatment in the United States; and

(3) Abuse of tapentadol may lead to severe psychological or physical dependence.

Based on these findings, the Deputy Administrator of DEA concludes that tapentadol, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, warrants control in schedule II of the CSA (**21 U.S.C. 812**(b)(2)).

Requirements for Handling Tapentadol

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with tapentadol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with tapentadol, must be registered to conduct such activities in accordance with part 1301 of Title 21 of the Code of Federal Regulations. Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before June 22, 2009 and may continue their activities until DEA has approved or denied that application.

Security. Tapentadol is subject to schedule II security requirements and must be manufactured, distributed, and stored in accordance with **Sec. Sec. 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76 and 1301.77 of Title 21** of the Code of Federal Regulations on or after June 22, 2009.

Labeling and Packaging. All labels and labeling for commercial containers of tapentadol must comply with requirements of **Sec. Sec. 1302.03 through 1302.07 of Title 21** of the Code of Federal Regulations on or after June 22, 2009.

Quotas. Quotas for tapentadol must be established pursuant to part **1303 of Title 21** of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of tapentadol must keep an inventory of all stocks of tapentadol on hand pursuant to Sec. Sec. 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations on or after June 22, 2009. Every registrant who desires registration in schedule II for tapentadol must conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to **Sec. Sec. 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23** of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Reports. All registrants required to submit reports to the Automation of Reports and Consolidated Order System (ARCOS) in accordance with **Sec. 1304.33** of Title 21 of the Code of Federal Regulations must do so for tapentadol.

Orders for Tapentadol. All registrants involved in the distribution of tapentadol must comply with the order form requirements of **part 1305 of Title 21** of the Code of Federal Regulations on or after June 22, 2009.

Prescriptions. All prescriptions for tapentadol or prescriptions for products containing tapentadol must be issued pursuant to **Sec. Sec. 1306.03 through 1306.06 and 1306.11 through 1306.15** of Title 21 of the Code of Federal Regulations on and after June 22, 2009.

Importation and Exportation. All importation and exportation of tapentadol must be in compliance with part 1312 of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Criminal Liability. Any activity with tapentadol not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful on or after June 22, 2009.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Tapentadol products will be prescription drugs used for the treatment

of moderate-to-severe acute pain. Handlers of tapentadol also handle other controlled substances used to treat pain which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

- Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to Title 28, Part 0, Appendix to Subpart R, Section 12, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

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PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: **21 U.S.C. 811, 812, 871**(b), unless otherwise noted.

2. Section 1308.12 is amended in the table by adding a new paragraph (c)(28) to read as follows:

Sec. 1308.12 Schedule II.

* * * * *

(c) * * *

(28) Tapentadol..... 9780

* * * * *

Dated: May 15, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-11933 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-09-P

Rules - 2009

FR Doc E9-27583[Federal Register: November 17, 2009 (Volume 74, Number 220)] [Proposed Rules] [Page 59108-59112] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr17no09-16]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-333P]

Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance carisoprodol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized, this action would impose the regulatory controls and criminal sanctions of schedule IV on those who handle carisoprodol and products containing carisoprodol.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before December 17, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Standard Time (EST) on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-333" on all written and electronic correspondence. Written comments sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to dea.diversion.policy@usdoj.gov. Comments may also be sent electronically through http://www.regulations.gov using the electronic comment form provided on that site. An electronic copy of this

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document is also available at the http://www.regulations.gov website. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight EST on the day the comment period closes because http://www.regulations.gov terminates the public's ability to submit comments at midnight EST on the day the comment period closes. Commenters in time zones other than EST may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Comments and Requests for Hearing: In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of **21 CFR 1308.44** and **1316.47**. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the

regulations as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)," may request a hearing. **21 CFR 1308.42.** Please note that DEA may grant a hearing only "for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment, or repeal of a rule issuable" pursuant to 21 U.S.C. 811(a). All correspondence regarding this matter should be submitted to the DEA using the address information provided above.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at http://www.regulations.gov and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the FOR FURTHER INFORMATION CONTACT paragraph.

Background

Carisoprodol is a centrally acting muscle relaxant and is indicated for the relief of discomfort associated with acute, painful musculoskeletal conditions. Carisoprodol has been available since 1959 as a prescription drug in the United States under the trade name Soma[supreg]. It is also marketed as generic products. Carisoprodol is similar to a variety of central nervous system (CNS) depressants, including meprobamate (C-IV) and chlordiazepoxide (C-IV). The actual abuse data from several databases demonstrate that carisoprodol is abused in the United States. Because of growing concerns about abuse of carisoprodol, a number of states have regulated carisoprodol under their controlled substance regulations, and a number of additional states are currently considering such regulation.

Because of the evidence relating to diversion, abuse, and trafficking of carisoprodol, in March 1996, the DEA requested from the DHHS a scientific and medical evaluation and a scheduling recommendation for carisoprodol, in accordance with **21 U.S.C. 811**(b).

In February 1997, the U.S. Food and Drug Administration (FDA) Drug Abuse Advisory Committee (DAAC) deliberated upon the abuse and scheduling issues and concluded that the data were insufficient to control carisoprodol under the CSA at that time. Since the FDA DAAC meeting, pharmacological studies addressing the abuse liability of carisoprodol have been conducted under the direction of the National Institute on Drug Abuse (NIDA) and the College on Problems of Drug Dependence (CPDD). DEA acquired new carisoprodol-related data on actual abuse, law enforcement encounters and other information and sent this supplementary information to DHHS on November 14, 2005. FDA acquired new data from the Drug Abuse Warning Network (DAWN), National Survey on Drug Use and Health (NSDUH), Florida Medical Examiners Commission reports, FDA's Adverse Event Reporting System (AERS) and information from the published scientific literature and conducted a scientific and medical evaluation. These data collectively indicate that carisoprodol has abuse potential and is being diverted, trafficked, with increasing frequency and magnitude.

Carisoprodol abuse has been associated with increasing numbers of emergency department (ED) visits in recent years as indicated by DAWN. The "abuse frequency," calculated as ED visits per 10,000 prescriptions, of carisoprodol (frequency range during 2002-2007: 15.1 to 22.6 visits/10,000 prescriptions) is similar to that of a schedule IV drug, diazepam (frequency range during 2002-2007: 12.5 to 14.1 visits/10,000 prescriptions). Carisoprodol is used as either the sole drug or in combination with other substances such as opioids, benzodiazepine, alcohol, marijuana, and cocaine. Data from the AERS database show that carisoprodol is associated with adverse health events including dependence and withdrawal syndrome.

The data from National Poison Data System of the American Association of Poison Control Centers documented 8,821 carisoprodol toxic exposure cases including 3,605 cases in which it was

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e sole drug mentioned in 2007. Medical Examiners Commission Reports released by the Florida Department of Law Enforcement (FDLE) indicate that carisoprodol/meprobamate related deaths in Florida increased by 100 percent from 208 deaths in 2003 to 415 deaths in 2008.

The National Forensic Laboratory Information System (NFLIS), a DEA system that tracks analyzed drug exhibits submitted by the federal, state, and local law enforcement, documented evidence of substantial diversion of carisoprodol. For example, law enforcement submitted a total of 3,873 carisoprodol drug items to participating forensic laboratories in 2008. NFLIS consistently listed carisoprodol in the top 25 most frequently identified drugs since 2000. The 2007 NSDUH data show that 2.7 million individuals used Soma[supreg] in their lifetime (i.e., ever used) for a non-medical purpose.

The data from in vitro electrophysiological studies using the whole-cell patch clamp technique demonstrate that carisoprodol elicits barbiturate-like effects. Intravenous drug self-administration studies in rhesus monkeys show that carisoprodol has positive reinforcing effects. Meprobamate, pentobarbital, and chlordiazepoxide substitute fully for the discriminative stimulus effects of carisoprodol in rats. Bemegride, a barbiturate antagonist, antagonizes the discriminative stimulus effects of carisoprodol.

Data from an animal study indicates that carisoprodol has dependence liability similar to barbital (schedule IV), a central nervous system depressant. Carisoprodol administered orally fully prevented the appearance of abstinence phenomena in dogs tolerant and dependent on barbital. Several published reports document evidence of tolerance and dependence to carisoprodol and indicate the occurrence of abstinence symptoms during carisoprodol withdrawal in humans.

On October 6, 2009, the Acting Assistant Secretary for Health, DHHS, sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that carisoprodol be placed into schedule IV of the CSA. Enclosed with the October 6, 2009, letter was a document prepared by the FDA entitled, "Basis for the Recommendation for Control of Carisoprodol in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)). The factors considered by the Assistant Secretary of Health and DEA **21 U.S.C. 811**(c)) with respect to carisoprodol were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (**21 U.S.C. 811**(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

1. Carisoprodol has a low potential for abuse relative to the drugs or other substances in Schedule III. Animal studies indicate that carisoprodol is similar to schedule IV drugs such as meprobamate and chlordiazepoxide in its central nervous system depressant effects. The documented data on law enforcement encounters and actual abuse of carisoprodol demonstrate that it has a potential for abuse and is being diverted and abused. Since 2000, DEA's NFLIS database consistently mentioned carisoprodol in the top 25 drugs that were most frequently identified by state and local forensic laboratories thereby indicating that carisoprodol is being diverted. Emergency department visits data from DAWN indicate that abuse frequency of carisoprodol is similar to that of diazepam, a schedule IV drug. Recent data from DAWN medical examiner reports and emergency department visits showed an increase in carisoprodol abuse.

2. Carisoprodol has a currently accepted medical use in treatment in the United States. Carisoprodol is an FDA approved drug and is used for the relief of discomfort associated with acute, painful musculoskeletal conditions.

3. Abuse of carisoprodol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. Carisoprodol, similar to barbital (schedule IV), prevents the abstinence syndrome in drug withdrawn barbital-dependent dogs. Published reports indicate that carisoprodol causes psychological or physical dependence and withdrawal syndrome.

Based on these findings, the Deputy Administrator of DEA concludes that carisoprodol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible warrants control in schedule IV of the CSA. (**21 U.S.C. 812**(b)(4))

References to the above studies and data may be found in the Health and Human Services scheduling recommendation and DEA's independent analysis, both of which are available on the electronic docket associated with this rulemaking.

Requirements for Handling Carisoprodol

If this rule is finalized as proposed, carisoprodol would be subject to CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a schedule IV controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with carisoprodol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with carisoprodol, would need to be registered to conduct such activities in accordance with 21 CFR part 1301.

Security. Carisoprodol would be subject to schedules III-V security requirements and would need to be manufactured, distributed, and stored in accordance with **21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77.**

Labeling and Packaging. All labels and labeling for commercial containers of carisoprodol which are distributed on or after finalization of this rule would need to comply with requirements of **21 CFR 1302.03-1302.07.**

Inventory. Every registrant required to keep records and who possesses any quantity of carisoprodol would be required to keep an inventory of all stocks of carisoprodol on hand pursuant to **21 CFR 1304.03, 1304.04 and 1304.11.** Every registrant who desires registration in schedule IV for carisoprodol would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to 21

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CFR **1304.03, 1304.04, 1304.21, 1304.22, and 1304.23.**

Prescriptions. All prescriptions for carisoprodol or prescriptions for products containing carisoprodol would be required to be issued pursuant to **21 CFR 1306.03-1306.06 and 1306.21, 1306.22-1306.27.**

Importation and Exportation. All importation and exportation of carisoprodol would need to be in compliance with **21 CFR part 1312.**

Criminal Liability. Any activity with carisoprodol not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

In considering the impact on small entities, the first question is whether a substantial number of small entities are affected. In this instance, the entities affected are those now selling carisoprodol- containing products without registration. DEA has identified 22 firms manufacturing carisoprodol-containing products

in 2009.\1\ Fifteen of these firms have existing DEA registrations. This leaves seven firms from this data set selling carisoprodol without registration. DEA has no information on the number of non-registrants [redacted]istributing or importing carisoprodol, but there is every reason to believe that the number of such firms is [redacted]ell in excess of the seven already identified. The Small Business Administration size standard for a small wholesaler of drugs is 100 employees. It is clearly possible to operate a drug distributing firm with fewer than 100 employees. There can be no question that a substantial number of small entities will be affected by this rule.

\1\ IMS Health National Prescription Audit (NPA).

The impact on non-registrants now selling carisoprodol will occur in two forms: the cost of registration and the cost of meeting the security requirements in **21 CFR part 1301**. There is also a potential impact on firms not now selling carisoprodol who might have wished to enter the market.

The annual registration fee for a distributor, importer, or exporter is $1,147. There is some uncertainty in estimating the cost of meeting the security requirements, because most nonregistrants already meet the security requirements, at least in part, for schedule III and IV substances. To be conservative, it is assumed that every nonregistrant will have to buy a safe to store carisoprodol. A safe with capacity of 13.5 cubic feet should be adequate. A safe of this size may be purchased for $1,350.\2\ Annualized over 15 years at 7.0 percent, that is $148 per year. Total annual cost of compliance with the rule, then, is $1,295. The usual standard for a significant economic impact is 1.0 percent of revenue. For $1,295 per year to be a significant economic impact, annual revenue of a firm would have to be under $130,000. Any firm in the business of distributing drugs needs annual revenue well in excess of that amount to sustain itself.

\2\ NationwideSafes.com http://www.nationwidesafes.com/capacity- more-than-4pt0-cu-ft.html.

[redacted]hould be acknowledged that, for a small firm, there may be some inconvenience and expense in [redacted]eparing necessary forms for registration and registration renewal. These are minor costs. There are also recordkeeping requirements, but these impose little or no incremental cost for a firm that is already maintaining records needed for a wholesale business. The costs of registration and security requirements will not be a significant economic impact.

If a firm chose not to register and to drop its carisoprodol line, the cost to the firm would exceed its earnings on the carisoprodol sales. The firm might also lose some customers who do not want to buy from a vendor without carisoprodol in its product line. A competent manager will recognize this cost. In light of the very small cost of registering, he would presumably choose to drop carisoprodol from the firm's products only if the firm were earning a negligible profit from that line and he judged that dropping it would not turn away significant customers. In light of the foregoing analysis, DEA finds that this rule will not have a significant economic impact on a substantial number of small entities. DEA has no information regarding the number of persons who may distribute carisoprodol-containing products, but do not manufacture, package, repackage, or relabel those products. Therefore, DEA seeks comment on any entities that might be affected by this control action.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

[redacted]his rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by [redacted]private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not [redacted]nificantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator

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hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for **21 CFR part 1308** continues to read as follows:

Authority: **21 U.S.C. 811, 812, 871**(b) unless otherwise noted.

2. **Section 1308.14** is amended by redesignating paragraphs (c)(5) through (c)(52) as paragraphs (c)(6) through (c)(53) and adding a new paragraph (c)(5) to read as follows:

Sec. 1308.14 Schedule IV.

* * * * *

(c) * * *

(5).Carisoprodol..... 8192

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Dated: November 10, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-27583 Filed 11-16-09; 8:45 am]

Rules - 2009

FR Doc E9-23971[Federal Register: October 6, 2009 (Volume 74, Number 192)] [Rules and Regulations] [Page 51234-51236] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr06oc09-3]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-327F]

Schedules of Controlled Substances; Placement of Fospropofol Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of schedule IV will be applicable to the manufacture, distribution, dispensing, importation, and exportation of fospropofol and products containing fospropofol.

DATES: Effective Date: November 5, 2009.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 2008, the Food and Drug Administration (FDA) approved fospropofol for marketing under the trade name Lusedra[reg] in the United States as a drug product indicated for monitored anesthesia care (MAC) sedation in adult patients undergoing diagnostic or therapeutic procedures.

Fospropofol, 2,6-diisopropopylphenoxymethyl phosphate disodium, is a water soluble, phosphono-O-methyl prodrug of propofol. It is metabolized in the body to propofol, the active metabolite. Propofol has been available for medical use in the United States since 1989 and is not currently a controlled substance. The pharmacological effects of fospropofol are attributed to the pharmacological actions of propofol. Propofol binds to [gamma]-aminobutyric acid (GABAA) receptor and acts as a modulator by potentiating the activity of GABA at this receptor.

Since propofol is the active metabolite of fospropofol, the abuse potential of fospropofol is comparable to that of propofol. Animal self-administration studies demonstrated that the reinforcing effects of propofol are relatively low and comparable to midazolam and other schedule IV benzodiazepines. Fospropofol elicits behavioral effects similar to methohexital and midazolam, schedule IV sedative-hypnotics.

Since fospropofol is a new molecular entity, there has been no evidence of diversion, abuse, or law enforcement encounters involving the drug.

On February 27, 2009, the Acting Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that fospropofol be placed into schedule IV of the CSA. Enclosed with the February 27, 2009, letter was a document prepared by the FDA entitled, "Basis for the Recommendation for Control of Fospropofol and Its Salts in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

After a review of the available data, including the scientific and medical evaluation and the scheduling recommendation from DHHS, the Deputy Administrator of the DEA published a Notice of Proposed Rulemaking entitled "Schedules of Controlled Substances: Placement of Fospropofol into Schedule IV" on July 23, 2009 (74 FR 36424), which proposed placement of fospropofol into schedule IV of the CSA. The

proposed rule provided an opportunity for all interested persons to submit their written comments on or before August 24, 2009.

Comments Received

The DEA received two comments in response to the Notice of Proposed Rulemaking. One comment received from a concerned citizen did not relate to fospropofol, the substance that is being controlled. Thus DEA did not consider this comment.

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Another comment received from a professional organization of anesthesiologists is in agreement with the findings of scientific and medical evaluation that formed the basis for the present rule controlling fospropofol as a schedule IV substance and it fully supported this control action.

Scheduling of Fospropofol

Based on the recommendation of the Acting Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Fospropofol has a low potential for abuse relative to the drugs or substances in schedule III. Although there is no direct comparison to a schedule III substance, this finding is based on the demonstration of the abuse potential of propofol, the active metabolite, relative to the schedule IV substances, methohexital and midazolam;

(2) Fospropofol has a currently accepted medical use in treatment in the United States; and

(3) Abuse of fospropofol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. This finding is based on the symptoms exhibited upon withdrawal from propofol.

Based on these findings, the Deputy Administrator of DEA concludes that fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible warrants control in schedule IV of the CSA. **(21 U.S.C. 812**(b)(4))

Requirements for Handling Fospropofol

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with fospropofol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with fospropofol, must be registered to conduct such activities in accordance with part **1301 of Title 21 of the Code of Federal Regulations**. Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before November 5, 2009 and may continue their activities until DEA has approved or denied that application.

Security. Fospropofol is subject to schedules III-V security requirements and must be manufactured, distributed, and stored in accordance with **Sec. Sec. 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Labeling and Packaging. All labels and labeling for commercial containers of fospropofol must comply with requirements of **Sec. Sec. 1302.03-1302.07** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Inventory. Every registrant required to keep records and who possesses any quantity of fospropofol must keep an inventory of all stocks of fospropofol on hand pursuant to Sec. **Sec. 1304.03, 1304.04 and 1304.11** of Title 21 of the Code of Federal Regulations on or after November 5, 2009. Every registrant who desires registration in schedule IV for fospropofol must conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to **Sec. Sec. 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Prescriptions. All prescriptions for fospropofol or prescriptions for products containing fospropofol must be issued pursuant to **Sec. Sec. 1306.03-1306.06 and 1306.21, 1306.22-1306.27** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Importation and Exportation. All importation and exportation of fospropofol must be in compliance with **part 1312** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Criminal Liability. Any activity with fospropofol not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful on or after November 5, 2009.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Fospropofol products will be used for monitored anesthesia care (MAC) sedation in adult patients undergoing diagnostic or therapeutic procedures. Handlers of fospropofol also handle other controlled substances used for sedation which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: Or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

0 Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28

[[Page 51236]]

CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

- 1. The authority citation for **21 CFR part 1308** continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

- 2. Section 1308.14 is amended in paragraph (c), by redesignating paragraphs (c)(23) through (c)(51) as paragraphs (c)(24) through (c)(52) and adding a new paragraph (c)(23) as follows:

Sec. 1308.14 Schedule IV.

* * * * *

(c) * * *

(23) Fospropofol..... 2138

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Dated: September 28, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-23971 Filed 10-5-09; 8:45 am]

Rules - 2010

[Federal Register: October 27, 2010 (Volume 75, Number 207)]
[Proposed Rules]
[Page 66195-66199]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr27oc10-24]

[[Page 66195]]

Part II

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-338]

Schedules of Controlled Substances: Placement of Propofol Into Schedule IV; Proposed Rule

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance propofol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of relevant data by DEA. If finalized, this action would impose the regulatory controls and criminal sanctions of schedule IV on those who handle propofol and products containing propofol.

DATES: Written comments must be postmarked on or before December 27, 2010, and electronic comments must be sent on or before midnight Eastern time December 27, 2010.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-327" on all written and electronic correspondence. Written comments sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments may be sent to DEA by sending an electronic message to **dea.diversion.policy@usdoj.gov**. Comments may also be sent electronically through **http://www.regulations.gov** using the electronic comment form provided on that site. An electronic copy of this document is also available at the http://www.regulations.gov Web site. DEA will accept electronic comments containing Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here. Please note that DEA is requesting that electronic comments be submitted before midnight Eastern Time on the day the comment period closes because http://www.regulations.gov terminates the public's ability to submit comments at midnight Eastern Time on the day the comment period closes. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at http://www.regulations.gov and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

On March 18, 2008, the Drug Enforcement Administration (DEA) received a petition requesting that 21 CFR 1308.13 be amended so that propofol be controlled as a schedule III substance under the CSA. The basis of the petition was the reports of increased incidences of propofol abuse during the past decade. The petitioner stated as the main argument in support of the request that:

*"Propofol is the most common intravenous anesthetic in the United States today but over the course of the decade, documented cases of abuse have been steadily increasing over the past 10 years * * * Unfortunately, there is also a very high mortality rate (greater than 33%) associated with this abuse."*

The petitioner stated that controlling propofol as a scheduled drug would require all practitioners to strictly monitor the access and use of propofol and possibly save lives.

Propofol was approved in 1989 and is an ultra-short acting intravenous (i.v.) anesthetic under the commercial name, Diprivan[supreg]. Propofol is also marketed as a generic drug under three trade names. Two veterinary versions, Rapinovet and PropoFlo/ PropoVet were approved for marketing in 1999 and 2000, respectively. Propofol is indicated in adults for the initiation and maintenance of Monitored Anesthesia Care (MAC) sedation, combined sedation, and regional anesthesia. It is also indicated for Intensive Care Unit (ICU) sedation of intubated and mechanically ventilated patients. For children, propofol is indicated for induction and maintenance of general anesthesia. Diprivan[supreg] is an injectable emulsion (10 mg/ mL).

Propofol, or 2,6-diisopropylphenol, is slightly soluble in water and is formulated in an oil-in-water emulsion that is milky-white in appearance. Fospropofol, the water-soluble O-methyl-phosphate disodium salt prodrug of propofol, has been recently controlled as a schedule IV substance under the CSA.

Propofol binds to the gamma-aminobutyric acid (GABAA) receptors and acts as a modulator by potentiating the activity of GABA at these receptors. Other psychoactive drugs that are controlled under the CSA, e.g., barbiturates (schedule II and III) and benzodiazepines (schedule IV), potentiate the activity of GABA at the GABAA receptors.

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Animal self-administration studies demonstrate the reinforcing effects of propofol in rat, mouse, and primate models. It has been demonstrated that drugs that are self-administered by animals also have drug abuse potential in humans. Propofol has been demonstrated to have reinforcing effects comparable to methohexital, a schedule IV sedative- hypnotic. A study found that both drug-na[iuml]ve and methohexital-trained (a schedule IV barbiturate) rats self-administer propofol under a fixed ratio schedule. In baboons, low-to-high levels of self- administration were maintained by subanesthetic doses of propofol after substituting for cocaine. There have been published abuse liability studies of propofol in humans in which the reinforcement and reward effects have been demonstrated. These studies showed that propofol produces subjective effects most comparable to schedule IV sedatives. Generally, the studies demonstrated that propofol dose-dependently increased the reporting by the subject feeling "high," relative to the placebo.

The motivation for abuse of propofol is generally for its sedative and relaxing properties and induction of euphoric effects. There have also been reports that propofol's ability to induce sexual illusions and disinhibition contributes to its appeal as a drug of abuse. Anecdotal reports of propofol abusers described their experiences as "pleasant," "euphoric," and "relaxing".

The current abuse profiles of propofol indicate that it is abused by medical professionals since they have access to the drug in medical facilities which perform anesthesia (Adverse Event Reporting System (AERS) DataMart database). In the AERS database, there are reports of propofol diversion and abuse, some of which resulted in death. In 96 percent of these cases, the abusers were health care providers or were in training programs to become health care professionals. Propofol is not currently controlled by either the Federal Government or State governments, and may not be a target or priority of law

enforcement; therefore, information on reported seizures and cases from Federal, State and local law enforcement agencies is very limited.

Schedule IV sedative-hypnotics, such as methohexital and midazolam, are known to produce euphoric moods and have histories of abuse in the United States and other countries. There have been published case reports of individuals who became dependent on propofol. These reports indicated that the individuals expressed a "craving" for propofol, causing them to compulsively self-inject daily. They were abusing propofol for its relaxing and euphoric effects. In a survey of academic anesthesiology programs, 18 percent reported diversion or abuse of propofol. Twenty-eight percent of the reported abusers of propofol had died due to propofol overdose. The individuals who died were affiliated with health care facilities in which there were no pharmacy or security mechanisms to control access to propofol. In a published survey of certified registered nurse anesthetists, propofol was reported to be the fourth most preferred drug to misuse among this population. Propofol abuse is associated with significant adverse health effects, including death. The known major side effects include pancreatitis, pulmonary edema, cardiovascular depression, and respiratory depression. The cause of death with propofol toxicity is due to severe respiratory depression.

Withdrawal symptoms observed upon ceasing long-term administration of a substance are indicative of a substance's ability to produce physical dependence. There have been published reports of withdrawal symptoms upon an abrupt cessation of administration of propofol after a prolonged treatment. The symptoms include agitation, tremors, tachycardia, tachypnea, hyperpyrexia, confusion, and hallucinations. These symptoms are similar to the symptoms observed upon withdrawal from benzodiazepines. Withdrawal symptoms improve once administration of propofol is reinitiated. A delusional state lasting up to seven days may occur before full mental functioning returns. It should be noted that after a prolonged administration of propofol, the cessation of administration should be done cautiously and the patient should be monitored for any signs of a withdrawal syndrome.

Propofol has been on the market since 1989, but, due to propofol being unavailable to the general public, the seizures of propofol on the Federal, State and local levels are very low. Medical professionals are the predominant population who are abusers of propofol. Subsequent to DEA gathering and evaluating the available data on propofol, on July 2, 2009, DEA requested that DHHS provide a scientific and medical evaluation of the available information and a scheduling recommendation for propofol, in accordance with 21 U.S.C. 811(b). On May 14, 2010, the Assistant Secretary for Health, DHHS, sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that propofol be placed into schedule IV of the CSA. Enclosed with the April 30, 2010, letter was a document prepared by the Food and Drug Administration (FDA) entitled, "Basis for the Recommendation for Control of Propofol and Its Salts in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

The references to the studies used in the evaluations for DHHS' scheduling recommendation and DEA's independent analysis can be found in both documents. These documents are available on the electronic docket associated with this rule making.

The factors considered by the Assistant Secretary of Health and DEA with respect to propofol were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter. (21 U.S.C. 811(c))

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Propofol has a low potential for abuse relative to the drugs or substances in schedule III. The abuse potential of propofol is comparable to the schedule IV substances, methohexital and midazolam;

(2) Propofol has a currently accepted medical use in treatment in the United States; propofol under the trade name Diprivan[supreg] was approved for marketing as a product indicated for monitored anesthesia care by FDA in 1989; and

(3) Abuse of propofol may lead to limited psychological dependence or physical dependence relative to the drugs or other substances in schedule III.

Based on these findings, the Deputy Administrator of DEA concludes that propofol, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrants

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control in schedule IV of the CSA (**21 U.S.C. 812**(b)(4)).

Comments and Requests for Hearing

In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of **21 CFR 1308.44** and **1316.47**. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the regulations as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)," may request a hearing (**21 CFR 1308.42**). Please note that DEA may grant a hearing only "for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment, or repeal of a rule issuable" pursuant to 21 U.S.C. 811(a). All correspondence regarding this matter including comments, objections, and requests for hearing should be submitted to DEA using the address information provided above.

Requirements for Handling Propofol

If this rule is finalized as proposed, propofol would be subject to CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a schedule IV controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities with propofol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities, or conduct research with propofol, would need to be registered to conduct such activities in accordance with **21 CFR part 1301**.

Security. Propofol would be subject to schedules III-V security requirements and would need to be manufactured, distributed, and stored in accordance with **21 CFR 1301.71**, **1301.72**(b), (c), and (d), **1301.73**, **1301.74**, **1301.75**(b) and (c), **1301.76**, and **1301.77**. Labeling and Packaging. All labels and labeling for commercial containers of propofol which are distributed on or after finalization of this rule would need to comply with requirements of **21 CFR 1302.03- 1302.07**.

Inventory. Every registrant required to keep records and who possesses any quantity of propofol would be required to keep an inventory of all stocks of propofol on hand pursuant to **21 CFR 1304.03**, **1304.04** and **1304.11**. Every registrant who desires registration in schedule IV for propofol would be required to conduct an inventory of all stocks of the substance on hand at the time of registration. Records. All registrants would be required to keep records pursuant to 21 CFR 1304.03, 1304.04, **1304.21**, **1304.22**, and **1304.23**.

Prescriptions. All prescriptions for propofol or prescriptions for products containing propofol would be required to be issued pursuant to **21 CFR 1306.03-1306.06** and **1306.21**, **1306.22-1306.27**.

Importation and Exportation. All importation and exportation of propofol would need to be in compliance with **21 CFR part 1312**.

Criminal Liability. Any activity with propofol not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5

U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Propofol products are used for the initiation and maintenance of MAC sedation, combined sedation, and regional anesthesia for adult and pediatric patients undergoing diagnostic or therapeutic procedures. Handlers of propofol will also handle other controlled substances used for sedation which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: Or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (**21 U.S.C. 811**(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, **812**, **871**(b) unless otherwise noted.

2. **Section 1308.14** is amended by redesignating paragraphs (c)(46) through

[[Page 66199]]

(c)(52) as paragraphs (c)(47) through (c)(53) and adding a new paragraph (c)(46) as follows:

Sec. 1308.14 Schedule IV.

* * * * * (c) * * *

(46) Propofol..... 2139

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Dated: October 19, 2010.

Michele M. Leonhart,
Deputy Administrator.

Rules 2009

FR Doc E9-11927[Federal Register: May 21, 2009 (Volume 74, Number 97)] [Rules and Regulations] [Page 23789-23790] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr21my09-1]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-325F]

Schedules of Controlled Substances: Placement of Lacosamide into Schedule V

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the DEA places the substance lacosamide [(R)-2-acetoamido-N-benzyl- 3-methoxy-propionamide] and any material, compound, mixture, or preparation which contains any quantity of lacosamide into schedule V of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of schedule V will be applicable to the manufacture, distribution, dispensing, importation and exportation of lacosamide.

DATES: Effective Date: This rule is effective June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2008, the Food and Drug Administration (FDA) approved lacosamide [(R)-2-acetoamido-N -benzyl-3-methoxy-propionamide] for marketing under the trade name Vimpat[supreg] for use as an adjunctive therapy in treatment of partial-onset seizures in patients with epilepsy ages 17 years and older.

On December 2, 2008, the Assistant Secretary for Health of the Department of Health and Human Services (DHHS) sent the Administrator of the DEA a scientific and medical evaluation and a letter recommending that lacosamide be placed into schedule V of the CSA. Enclosed with the December 2, 2008, letter was a document prepared by the FDA entitled "Basis for the Recommendation for Control of Lacosamide in Schedule V of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (**21 U.S.C. 811**(b)).

Based on the recommendation of the Assistant Secretary for Health and an independent review of the available data by the DEA, the Deputy Administrator of the DEA, in a March 10, 2009, Notice of Proposed Rulemaking (74 FR 10205) proposed placement of lacosamide into schedule V of the CSA. The proposed rule provided an opportunity for all interested persons to submit their comments, objections, or requests for hearing to be received by the DEA on or before April 9, 2009.

Comments Received

DEA received one comment within the comment period in response to the Notice of Proposed Rulemaking. The commenter stated that lack of information and inappropriate comparisons to other drugs precluded the scheduling of lacosamide and suggested that scheduling be postponed for 24 months to collect data.

DEA does not agree. The studies used to assess abuse potential of lacosamide are widely held as the standard methods of evaluation. Behavioral effects of lacosamide in animals and humans were found to be similar to, but transient relative to, those of the schedule IV drugs alprazolam and phenobarbital. Preclinical studies indicated that lacosamide is self-administered at rates higher than saline and partially mimics discrimitive stimulus effects to the schedule IV substances alprazolam and phenobarbital. In clinical trials, lacosamide produced subjective responses similar to alprazolam but these effects did not

last as long as alprazolam. After careful consideration of positive indicators from preclinical and clinical studies, DEA finds lacosamide has abuse potential supporting placement in schedule V under the CSA. The DHHS recommended control in schedule V of the CSA and the DEA concurs.

The commenter also submitted a request for a hearing. DEA regulations provide that "[a]ny interested person" may request a hearing on a proposed scheduling action. **21 CFR 1308.44**(a). DEA regulations define "interested person" as "any person adversely affected or aggrieved by any rule or proposed rule issuable pursuant to [21 U.S.C. 811]." **21 CFR 1300.01**(b)(19). The regulations further require that any person requesting a hearing must state "with particularity" his interest in the proceeding. **21 CFR 1316.47** (a). The commenter failed to provide sufficient information to demonstrate that he meets the definition of "interested person" as set forth in the regulations, therefore DEA is denying his hearing request. DEA also received many comments after the comment period closed. These late comments were not considered by DEA.

Scheduling of Lacosamide

Based on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Lacosamide has a low potential for abuse relative to the drugs or other substances in schedule IV;

(2) Lacosamide has a currently accepted medical use in treatment in the United States; and

(3) Abuse of lacosamide may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

Based on these findings, the Deputy Administrator of the DEA concludes that lacosamide and any material, compound, mixture, or preparation which contains any quantity of lacosamide, warrant control in schedule V of the CSA.

Requirements for Handling Lacosamide

Registration. Any person who manufactures, distributes, dispenses,

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imports, exports, engages in research or conducts instructional activities with lacosamide, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with lacosamide, must be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations (CFR). Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before June 22, 2009 and may continue their activities until the DEA has approved or denied the application.

Security. Lacosamide is subject to schedule III-V security requirements and must be manufactured, distributed, and stored in accordance with **Sec. Sec. 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77** of Title 21 of the CFR on and after June 22, 2009.

Labeling and Packaging. All labels and labeling for commercial containers of lacosamide which are distributed on or after June 22, 2009 must comply with requirements of **Sec. Sec. 1302.03-1302.07** of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of lacosamide must keep an inventory of all stocks of lacosamide on hand pursuant to **Sec. Sec. 1304.03, 1304.04 and 1304.11** of Title 21 of the CFR on or after June 22, 2009. Every registrant who desires registration in schedule V for lacosamide must conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to **Sec. Sec. 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23** of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Prescriptions. All prescriptions for lacosamide pharmaceutical products must be issued pursuant to **21 CFR 1306.03-1306.06 and 1306.21, 1306.23-1306.27** on or after June 22, 2009.

Importation and Exportation. All importation and exportation of lacosamide must be in compliance with part 1312 of Title 21 of the CFR on or after June 22, 2009.

Criminal Liability. Any activity with lacosamide not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after June 22, 2009 shall be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, Sec. 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Lacosamide pharmaceutical products will be prescription drugs used for the treatment of partial-onset seizures. Handlers of lacosamide often handle other controlled substances used in the treatment of central nervous system disorders which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sec. Sec. 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

- Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to Title 28, Part 0, Appendix to Subpart R, Section 12, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for **21 CFR part 1308** continues to read as follows:

Authority: 21 U.S.C. 811, **812**, **871**(b) unless otherwise noted.

2. Section 1308.15 is amended by revising paragraph (e)(1) and adding a new paragraph (e)(2) to read as follows:

Sec. 1308.15 Schedule V.

* * * * *

(e) * * *

(1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]-- 2746 (2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]--2782

Dated: May 12, 2009.

BOARD OF PHARMACY
State of North Dakota

Jack Dalrymple, Governor

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Proposed Amendments to Senate Bill No 2119
Senate Judiciary Committee
Fort Lincoln Room – State Capitol Bldg
9:00 AM – Wednesday - January 19th, 2011

On page 5 line 14, 5-Methoxy-N,N-Dimethyltrytamine is misspelled and should be spelled 5-Methoxy-N,N-Dimethyltryptamine.

On page 12 line 12, add

c. Immediate precursors to Fentanyl

(1) 4-anilino-N-phenethyl-4-piperidine (ANPP).

And renumber accordingly.

Rules - 2010

FR Doc 2010-15520[Federal Register: June 29, 2010 (Volume 75, Number 124)] [Rules and Regulations] [Page 37295-37299] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr29jn10-8]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-305F] RIN 1117-AB16

Control of Immediate Precursor Used in the Illicit Manufacture of Fentanyl as a Schedule II Controlled Substance

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final Rule.

SUMMARY: The Drug Enforcement Administration (DEA) is designating the precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP) as an immediate precursor for the schedule II controlled substance fentanyl under the definition set forth in **21 U.S.C. 802**(23). Furthermore, DEA is finalizing the control of ANPP as a schedule II substance under the Controlled Substances Act (CSA), pursuant to the authority in 21 U.S.C. 811(e), which states that an immediate precursor may be placed in the same schedule as the controlled substance it produces, without regard to the procedures required by 21 U.S.C. 811(a) and (b) and without regard to the findings required by **21 U.S.C. 811**(a) and **812**(b).

ANPP is the immediate chemical intermediary in the synthesis process currently used by clandestine laboratory operators for the illicit manufacture of the schedule II controlled substance fentanyl. In 2005 and 2006, the distribution of illicitly manufactured fentanyl caused an unprecedented outbreak of hundreds of fentanyl-related

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overdoses in the United States. DEA believes that the control of ANPP as a schedule II controlled substance is necessary to prevent its diversion as an immediate chemical intermediary for the illicit production of fentanyl.

DATES: This rulemaking becomes effective August 30, 2010.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152 at (202) 307-7183.

SUPPLEMENTARY INFORMATION: The DEA is extremely concerned with the recent increase in the illicit manufacture and distribution of fentanyl, which has resulted in hundreds of fentanyl-related overdoses and fentanyl-related deaths in several areas of the country. Therefore, on April 9, 2008, DEA published a Notice of Proposed Rulemaking (NPRM) [73 FR 19175] to designate the precursor chemical, 4-anilino-N- phenethyl-4-piperidine (ANPP) as an immediate precursor for the schedule II controlled substance fentanyl under the definition set forth in 21 U.S.C. 802(23). This rulemaking finalizes that NPRM.

Under the immediate precursor provision in 21 U.S.C. 811(e), DEA may schedule an immediate precursor "without regard to the findings required by" section 811(a) or section 812(b) and "without regard to the procedures" prescribed by section 811(a) and (b). Because of the authority in section 811(e), DEA need not address the "factors determinative of control" in section 811 or the findings required for placement in schedule II in section 812(b)(2).

This rulemaking finalizes two actions. It (1) designates the precursor chemical ANPP as an immediate precursor for the schedule II controlled substance fentanyl under the definition set forth in 21 U.S.C. 802 ; and (2) controls ANPP as a schedule II substance pursuant to the authority in 21 U.S.C. 811(e).

Background

Fentanyl is a schedule II controlled substance. Fentanyl and analogues of fentanyl are the most potent opioids available for human and veterinary use. Fentanyl produces opioid effects that are indistinguishable

from morphine or heroin, but fentanyl has a greater potency and a shorter duration of action. Fentanyl is approximately 50 to 100 times more potent than morphine and 30 to 50 times more potent than heroin, depending on the physiological or behavioral measure, the route of administration, and other factors.

The legitimate medical use of fentanyl is for anesthesia and analgesia, but fentanyl's euphoric effects are highly sought after by narcotic addicts. Fentanyl can serve as a direct pharmacological substitute for heroin in opioid-dependent individuals. Fentanyl is a very dangerous substitute for heroin, however, because the amount that produces a euphoric effect also induces respiratory depression. Furthermore, due to fentanyl's greater potency, illicit drug dealers have trouble adjusting ("cutting") pure fentanyl into non-lethal dosage concentrations. Heroin users similarly have difficulty determining how much to take to get their "high" and sometimes mistakenly take a lethal quantity of the fentanyl. Unfortunately, only a slight excess of fentanyl can be, and is often, lethal because the resulting level of respiratory depression is sufficient to cause the user to stop breathing.

Illicit Fentanyl-Related Deaths

In 2005 and 2006, DEA saw a sharp increase in the seizures of illicit fentanyl. The distribution of illicit fentanyl or illicit fentanyl combined with heroin or with cocaine (i.e., a "speedball") resulted in an outbreak of hundreds of confirmed and suspected fentanyl-related overdose deaths in the United States since April 2005, according to the Centers for Disease Control and Prevention and medical examiners representing numerous cities and counties across the United States. DEA terms fentanyl-related deaths "suspected" until confirmed through the completion of an autopsy, a positive toxicological testing result for fentanyl in the blood and the reporting of the death to the DEA.

To address this emergency health situation, DEA published an Interim Final Rule, "Control of a Chemical Precursor Used in the Illicit Manufacture of Fentanyl as a List I Chemical" (72 FR 20039, April 23, 2007), followed by a Final Rule (73 FR 43355, July 25, 2008), to control N-phenethyl-4-piperidone (NPP), the chemical precursor to ANPP, as a List I chemical. As DEA discussed extensively in that Interim Final Rule, at least 972 confirmed fentanyl-related deaths, and 162 suspected fentanyl-related deaths, mostly in Delaware, Illinois, Maryland, Michigan, Missouri, New Jersey, and Pennsylvania were initially reported to the DEA. The number of fentanyl- related deaths significantly decreased after October 2006 and continued at lower levels following control of the precursor NPP in 2007.

From the information and data collected, there is a strong indication that the fentanyl in these confirmed and suspected fentanyl- related deaths is the result of illicitly manufactured fentanyl, rather than from fentanyl diverted from legal pharmaceutical manufacturers. Forensic testing of seized fentanyl drug exhibits can identify manufacture procedure markers such as benzylfentanyl and ANPP. The forensic data suggests that most of these fentanyl-related deaths are from fentanyl illicitly manufactured by the procedure called the Siegfried method, discussed in DEA's Interim Final Rule, which uses NPP/ANPP.

Synthesis of Fentanyl

DEA has determined from the forensic testing of seized illicit fentanyl that two primary synthesis routes (i.e., the Janssen synthesis route and the Siegfried method) are being used to produce fentanyl clandestinely. In 1965, Janssen Pharmaceutical patented the original synthesis procedure for fentanyl. The Janssen synthesis route is difficult to perform and is beyond the rudimentary skills of most clandestine laboratory operators. Only individuals who have acquired advanced chemistry knowledge and skills have successfully used this synthesis route. Forensic laboratories can determine whether fentanyl was manufactured illicitly by the Janssen route by detecting the impurity benzylfentanyl in the tested fentanyl drug exhibit.

In the early 1980s, an alternate route for fentanyl synthesis was published in the scientific literature; it uses N-phenethyl-4- piperidone (NPP) as the starting material. The NPP synthesis route is described on the Internet and is referred to as the Siegfried method. The chemical intermediary ANPP is produced during the synthesis and is the immediate precursor used in the illicit manufacture of fentanyl in the last stage of the Siegfried method. The Chemical Abstracts Service Registry Number \1\ (CASRN) for ANPP is 21409-26-7. The detection of the impurity 4-anilino-N-phenethyl-4-piperidine (ANPP) without the presence of benzylfentanyl in the fentanyl drug exhibit suggests that the fentanyl was manufactured by the Siegfried method (or a modified version) that produces

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the precursor ANPP and then converts ANPP directly to fentanyl. (A small amount of ANPP is not consumed in the last reaction in the synthesis, and thus a trace amount of ANPP remains in the fentanyl.)

\1\ The Chemical Abstracts Service Registry Number (CASRN) is created by the Chemical Abstracts Service (CAS) Division of the American Chemical Society and is part of an automated information system housing data and information on specific, definable chemical substances. The CASRN provides consistent and unambiguous identification of chemicals and facilitates sharing of chemical information.

[redacted]e increase in street-level fentanyl may be the result of the relative ease with which fentanyl can be produced via the Siegfried method and the widespread distribution of the Siegfried method on the Internet. Preliminary data indicate that the majority of the deaths in the 2005-2006 fentanyl outbreak have resulted from the distribution of illicit fentanyl made by the Siegfried method and marked by traces of ANPP rather than benzylfentanyl.

Role of ANPP in Synthesis of Fentanyl

Since 2000, four of the five domestic fentanyl clandestine laboratories seized by law enforcement agents have used the Siegfried method or a modified version of the Siegfried method in manufacturing fentanyl. The amount of illicit fentanyl and precursor chemicals found at these four laboratories could have generated a total of 5,800 grams of illicit fentanyl. Since fentanyl is potent in sub-milligram quantities, the subsequent "cutting" of 5,800 grams of illicit fentanyl would be sufficient to make about 46 million fentanyl doses.

The precursor chemical NPP is the starting material utilized in the Siegfried method of synthesizing fentanyl, both in industry and in illicit drug laboratories. Under a separate rulemaking first published as an interim rule on April 23, 2007 (72 FR 20039), followed by a final rule on July 25, 2008 (73 FR 43355), DEA has controlled the precursor NPP as a List I chemical under the regulatory control provisions of the CSA (**21 CFR part 1300**).

During the production process, the starting material, NPP, is subjected to a series of chemical reactions in order to produce the intermediary chemical ANPP. The ANPP is then subjected to a simple chemical reaction resulting in the synthesis of fentanyl. DEA has not identified any industrial uses for ANPP and believes that ANPP is only produced as a chemical intermediary in the production of fentanyl, either in the legitimate production of pharmaceutical fentanyl or the illicit production of fentanyl in clandestine laboratories. ANPP is, therefore, an immediate chemical intermediary in the synthesis of fentanyl and is produced primarily for this purpose.

DEA is controlling ANPP as a schedule II controlled substance in an effort to prevent its use in production [redacted]f illicit fentanyl. DEA believes control is necessary to prevent unscrupulous chemists from synthesizing [redacted]d distributing ANPP (as an unregulated material), and selling it through the Internet and other channels [redacted]individuals who may wish to acquire an unregulated precursor for fentanyl synthesis. DEA believes this action is also advisable in order to deter the theft of ANPP from legitimate pharmaceutical firms where it is generated in the course of fentanyl production. It has been determined by DEA's Office of Forensic Sciences that ANPP can also be produced through synthetic pathways that do not require NPP as the starting material. Therefore, DEA believes that controlling ANPP directly is necessary to prevent the illicit production of fentanyl.

Designation as an Immediate Precursor

Under **21 U.S.C. 811**(e), the Attorney General may place an immediate precursor into the same schedule as the controlled substance that the immediate precursor is used to make. The substance must meet the requirements of an immediate precursor under 21 U.S.C. 802(23). The term "immediate precursor" as defined in **21 U.S.C. 802**(23) means a substance:

(A) Which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

DEA finds that ANPP meets the three criteria for the definition of an immediate precursor under 21 U.S.C 802(23). First, DEA finds that ANPP is produced primarily for use in the manufacture of the schedule II controlled substance fentanyl. As stated in the preceding section, under the Siegfried method, ANPP is typically produced from the starting material NPP and is then subjected to a simple one-step chemical reaction to obtain the schedule II controlled substance fentanyl. DEA has not identified any industrial or other uses for ANPP and believes that it is produced primarily during the synthesis of fentanyl.

[redacted]Second, DEA finds that ANPP is an immediate chemical intermediary used in the manufacture of the [redacted]ntrolled substance fentanyl. As stated earlier, ANPP is produced as an intermediary in the fentanyl [redacted]nthetic pathway. After it is synthesized, the ANPP is subjected to a simple chemical reaction that converts it directly to fentanyl.

Third, DEA finds that controlling ANPP is necessary to prevent, curtail, and limit the unlawful manufacture of the controlled substance fentanyl. As noted above, DEA believes this action is necessary to assist in

preventing the possible theft of ANPP from legitimate pharmaceutical firms where it is a chemical intermediary generated for fentanyl production. As a schedule II substance, ANPP will be safeguarded to the same degree that pharmaceutical firms now safeguard the fentanyl that they produce. DEA believes this increased level of security is necessary to prevent diversion of ANPP.

As noted previously, ANPP can also be produced through synthetic pathways that do not require NPP as the precursor material. Accordingly, DEA believes control is necessary to prevent unscrupulous chemists from synthesizing ANPP and selling it (as an unregulated material) through the Internet and other channels to individuals who may wish to acquire an unregulated precursor for fentanyl synthesis, in order to circumvent the regulation of NPP as a List I chemical.

DEA believes that the control of ANPP is necessary to prevent its production and use in the illicit production of fentanyl. Therefore, DEA is designating ANPP as an immediate precursor of fentanyl pursuant to **21 U.S.C. 802**(23) and **21 U.S.C. 811**(e).

Placement in Schedule II--Findings Required Under CSA Immediate Precursor Provisions

Under the authority in 21 U.S.C. 811(e), once ANPP is designated as an immediate precursor under 21 U.S.C. 802(23), it may be placed directly into schedule II (or a schedule with a higher numerical designation). The immediate precursor provision in 21 U.S.C. 811(e) permits DEA to schedule an immediate precursor "without regard to the findings required by" section 811(a) or section 812(b) and "without regard to the procedures" prescribed by section 811(a) and (b). Accordingly, DEA need not address the "factors determinative of control" in section 811(c) \2\ or the

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findings required for placement in schedule II in section 812(b)(2).\3\

\2\ Under administrative scheduling of a substance pursuant to 21 U.S.C. 811(c), DEA must consider the "factors determinative of control." The DEA must consider the following factors with respect to each drug or other substance proposed to be controlled in a schedule:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effect, if known; (3) The state of current scientific knowledge regarding the drug or other substance;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled.

21 U.S.C. 811(e) specifies that none of these factors must be considered, however, in the control of an "immediate precursor."

\3\ The findings for schedule II include (A) the drug or other substance has a high potential for abuse; (B) the drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; and (C) abuse of the drug or other substance may lead to severe psychological or physical dependence.

Based on the finding that ANPP is an "immediate precursor" for fentanyl, DEA is hereby placing ANPP directly into schedule II.

NPRM Comments

As part of this NPRM, DEA solicited comments and requested information on any possible legitimate uses of ANPP unrelated to fentanyl (including industrial uses) to assess the potential commercial impact of scheduling ANPP. DEA solicited input from all potentially affected parties regarding: (1) The types of legitimate industries using ANPP; (2) the legitimate uses of ANPP; (3) the size of the domestic market for ANPP; (4) the number of manufacturers of ANPP; (5) the number of distributors of ANPP; (6) the level of import and export of ANPP; (7) the potential burden these proposed regulatory controls of ANPP may have on legitimate commercial activities; (8) the potential number of individuals/firms that may be adversely affected by these proposed regulatory controls (particularly with respect to the impact on small businesses); and (9) any other information on the manner of manufacturing, distribution, consumption, storage, disposal, and uses of ANPP by industry and others. DEA invited all interested parties to provide any information on any legitimate uses of ANPP in industry, commerce, academia, research and development, or other applications.

In response to the NPRM, DEA received only one comment. The commenter expressed concerns that the Aggregate Production Quotas for ANPP would need to take into account production losses that are inherent in the manufacture of fentanyl. Additionally, the commenter expressed concerns that the effective

date of the rulemaking may adversely impact the timetable for production of fentanyl, since manufacturers uld be required to obtain ANPP registrations and manufacturing quotas prior to being able to produce tanyl.

In response to this comment, DEA recognizes that the ANPP Aggregate Production Quota must be established at a level that allows adequate production losses. Additionally, DEA is aware of the concerns of fentanyl manufacturers and will use its best efforts to minimize the impact of the new ANPP regulations on the legitimate production of fentanyl for medical use. Any person who manufactures, distributes, imports, exports, engages in research or conducts instructional activities with ANPP, or who desires to manufacture, distribute, import, export, engage in instructional activities or conduct research with ANPP, must be registered to conduct such activities in accordance with part 1301 of Title 21 of the Code of Federal Regulations. Current bulk manufacturers, importers, and exporters of ANPP must submit an application for registration or an application to amend an existing registration to include ANPP on or before August 30, 2010 and may continue their activities until DEA has approved or denied that application.

Requirements for Handling Schedule II Substances

This rulemaking finalizes two actions. It (1) designates the precursor chemical ANPP as an immediate precursor for the schedule II controlled substance fentanyl under the definition set forth in **21 U.S.C. 802** (23); and (2) controls ANPP as a schedule II substance pursuant to the authority in **21 U.S.C. 811**(e).

The scheduling of ANPP as an immediate precursor will subject ANPP to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a schedule II controlled substance.

DEA has not identified any legitimate industrial use for ANPP, other than its role as an intermediary chemical in the production of fentanyl by the pharmaceutical industry. If ANPP is used only to manufacture fentanyl, the regulation of ANPP as an immediate precursor will not represent a new, major regulatory burden because fentanyl manufacturers have already implemented the CSA requirements for schedule II substances. For example, since fentanyl is a schedule II controlled substance, these firms will already be schedule II registrants and will already have adequate schedule II security. As a result of this rulemaking, ese firms will need to begin storing ANPP under the same security controls already used for the final duct fentanyl. The impact upon legitimate industry of controlling ANPP as a schedule II substance uld be minimal. The regulatory requirements will include the following:

Registration. Any person who manufactures, distributes, imports, exports, engages in research or conducts instructional activities with ANPP, or who desires to manufacture, distribute, import, export, engage in instructional activities or conduct research with ANPP, must be registered to conduct such activities in accordance with **21 CFR part 1301**. Current bulk manufacturers, importers and exporters of ANPP must submit an application for registration or an application to amend an existing registration to include ANPP on or before August 30, 2010 and may continue their activities until DEA has approved or denied that application.

Security. ANPP will be subject to schedule II security requirements. To prevent diversion, ANPP will have to be manufactured, distributed, and stored in accordance with the standards for physical security and the operating procedures set forth in **21 CFR 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77.**

This rule does not establish any new security requirements for schedule II controlled substances. The following existing security requirements are provided for informational purposes only. Existing DEA physical security regulations require that, for schedule I and II controlled substances, raw material, bulk materials awaiting further processing, and finished products be stored in either a safe or steel cabinet (if the quantity is small) or in a vault (**21 CFR 1301.72**). DEA regulations set forth specific requirements regarding these structures. Controlled substances must be stored in these facilities during the manufacturing process except where a continuous manufacturing process should not be interrupted (**21 CFR 1301.73**). Secure storage areas are required to have an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or to a local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the registrant, or other protection as approved by DEA (21 CFR 1301.72(a)(1)(iii), 1301.72(a)(3)(iv)). The controlled substances storage areas are required to be accessible only to an absolute minimum number of specifically authorized employees (21 CFR 1301.72(d)). When it is necessary for other personnel or guests to be present

[[age 37299]]

, or pass through, such secure areas, the registrant shall provide for adequate observation of the area by an employee (21 CFR 1301.72(d), 1301.73(c)).

Labeling and Packaging. All labels and labeling for commercial containers of ANPP that are distributed will be required to comply with the requirements of **21 CFR 1302.03-1302.07**.

Quotas. Quotas for ANPP will be established pursuant to 21 CFR part 1303.

Inventory. Every registrant who possesses any quantity of ANPP will be required to keep an inventory of all stocks of the substance on hand pursuant to 21 CFR 1304.03, 1304.04 and 1304.11.

Records. All registrants will be required to keep records pursuant to **21 CFR 1304.03, 1304.04, and 1304.21-1304.23.**

Reports. All registrants will be required to submit reports in accordance with **21 CFR 1304.33.**

Orders. All registrants involved in the distribution of ANPP will be required to comply with the order requirements of **21 CFR part 1305.**

Importation and Exportation. All registrants involved in the importation and exportation of ANPP will be required to comply with **21 CFR part 1312.**

Prescriptions. All prescriptions for ANPP or prescriptions for products containing ANPP will be required to be issued pursuant to **21 CFR 1306.03-1306.06 and 21 CFR Sec. Sec. 1306.11-1306.15.**

Criminal Liability. Any activity with ANPP in violation of or not authorized under the Controlled Substances Act or the Controlled Substances Import and Export Act will be unlawful and potentially subject to criminal penalties (**21 U.S.C. 841-863 and 959-964**).

Regulatory Certifications

Regulatory Flexibility and Small Business Concerns

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. If an agency finds that there is a significant economic impact on a substantial number of small entities, the agency must consider whether alternative approaches could mitigate the impact on small entities. The size criteria for small entities are defined by the Small Business Administration in 13 CFR 121.201.

DEA has not identified any legitimate industrial use for ANPP, other than its role as an intermediary chemical in the production of fentanyl by the pharmaceutical industry. DEA has not identified any firms that import, export, or distribute ANPP. If ANPP is used only to manufacture fentanyl, the potential regulation of ANPP as an immediate precursor will not represent a new, major regulatory burden, because fentanyl manufacturers have already implemented the CSA requirements for the handling of schedule II substances. Consequently, DEA believes this rule will not have a significant economic impact on a substantial number of small entities. DEA did not receive any comments suggesting that this rule will result in a significant economic impact on any small entities.

Executive Order 12866

The Deputy Administrator certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Sec. 1(b). It has been determined that this is "a significant regulatory action." Therefore, this action has been reviewed by the Office of Management and Budget.

DEA is regulating ANPP as a schedule II substance. Any person manufacturing, distributing, dispensing, conducting research with, importing, or exporting ANPP will have to register each location where ANPP is handled, maintain records of transactions involving ANPP, and take steps to ensure that inventories are secure (e.g., stored in sealed containers in areas where access can be controlled or monitored). DEA has not identified any domestic chemical companies that distribute ANPP, other than the production as an intermediate during the manufacture of fentanyl. Such manufacturers are already registered with DEA for the schedule II drug fentanyl.

Executive Order 12988

This regulation meets the applicable standards set forth in Sec. Sec. 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

[redacted]his rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by [redacted] private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not [redacted]gnificantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: **21 U.S.C. 811, 812, 871**(b) unless otherwise noted.

2. Section 1308.12 is amended by adding a new paragraph (g)(3) to read as follows:

Sec. 1308.12 Schedule II.

* * * * *

(g) * * *

(3) Immediate precursor to fentanyl:

[redacted]4-anilino-N-phenethyl-4-piperidine (ANPP)..... 8333

(ii) [Reserved]

Dated: June 19, 2010.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. 2010-15520 Filed 6-28-10; 8:45 am] BILLING CODE 4410-09-P

[redacted]

UNDER THE MICROSCOPE

Vol. 1, Issue 1, July 2010

Director's Corner

***Hope Olson**, Director, ND Crime Laboratory (Photo: Brandy Schneider)*

In the past, communication between the Crime Laboratory and law enforcement has sometimes been strained and there have been occasional misunderstandings.

The Office of Attorney General and the Crime Laboratory Division hope this monthly newsletter will improve communication with law enforcement and state's attorneys, and will educate interested parties about different aspects of the Laboratory.

Upcoming issues will introduce the Lab's dedicated staff and cover a variety of topics from new instruments to turnaround times, and upcoming training to techniques and tips.

New Staffing

This past legislative session the laboratory received funding for 6 new positions; five forensic scientists and one evidence technician, all of whom have now been hired and training is almost completed.

The new staff were added in the DNA Unit and Toxicology Sections of the laboratory to alleviate the heavy workload and as a result, turnaround times for Toxicology Drug Screening cases and processing DNA casework have been decreasing steadily for several months.

Turnaround Times

The goal of the laboratory is to establish an average 30 day turnaround time for all analyses by the end of this year. The current processing times for analyses at the laboratory varies from almost 3 months to priority processing, depending on the discipline:

- Arsons - less than 14 days
- Blood Alcohol - 9 days
- DNA Testing - 50 days
- Drug Screens - 88 days
- Firearm/Tool Mark - Priority processing
- Latent Prints/Patterns - 45 days
- Drugs - 16 days
- Biological screenings - less than 14 days

This Issue

Online Training

The Chemical Test Operator recertification training, held online during May and June, 2010, was a success.

During the testing period, 1,233 CTOs completed the training and have been recertified.

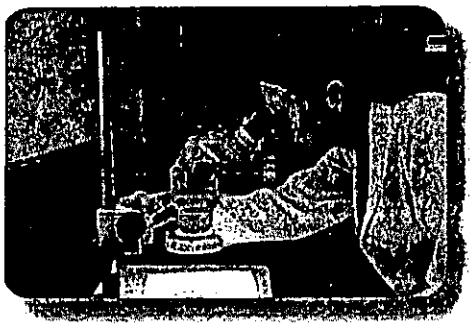
The names and CTO numbers of these officers will be included on the List of Chemical Test Operators filed with the county auditors.

There were 843 operators who did not complete the training before the June 15, 2010 deadline. Beginning July 1, 2010, these officers will not be certified.

The online training reopens on July 1, 2010, to allow these officers to complete the training and then regain certification.

Synthetic Cannabinoids

By: Charlene Schweitzer, Forensic Scientist



Synthetic Cannabinoids have been a hot topic around the nation lately. These compounds bind to the brain's cannabinoid receptors in the same way as THC, the psychoactive ingredient in Marijuana. There are hundreds of synthetic cannabinoids compounds, with most having a complete different chemical structure than THC, a schedule I controlled substance. These compounds give users a "high" similar to THC but the short and long term effects are unknown.

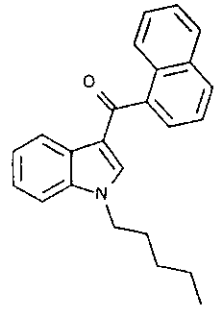
Hundreds of the JWH compounds were originally synthesized and named by Dr. John W. Huffman, a Clemson University organic chemist, who was researching the different affinities these compounds have on the cannabinoid brain receptors. The most prevalent synthetic compound that has been detected by the Crime Lab Division is JWH-018, which has been said to be four times more potent than THC. We have also seen JWH-073 and JWH-081.

The synthetic compounds are commonly sprayed onto herbal smoking mixtures which are labeled "not for human consumption" but sold as incense or room deodorizers. Numerous different brand names of these plant material blends have surfaced around the world, including "Sparks" and K-2."

February 2010, the State Board of Pharmacy emergency scheduled five synthetic cannabinoids as schedule I controlled substances: HU-210, HU-211, JWH-018, JWH-073, and CP 47,497.[1]

North Dakota is not the only state to make some of these compounds illegal. Georgia, Kansas, and Kentucky have all passed bills making some of these compounds illegal and Alabama, Florida, Illinois, Louisiana, Michigan, Missouri, New York, Tennessee, and Utah all currently have legislation proposed.

It is going to be an ongoing battle as the synthetic cannabinoid world unfolds.



JWH-018 Molecular Structure

[1] The first arrest under the new rules occurred in May, 2010. Multiple felony charges are pending in Burleigh County District Court against William Nickles, owner of "Big Willies" in Mandan, for possession and delivery of controlled substances.

New Liaison Position

The Crime Laboratory is pleased to welcome its new Law Enforcement Liaison Officer.

Chief Agent Lonnie Grabowska ND BCI

Chief Agent Lonnie Grabowska, NDBCI, was appointed to the position last month by Attorney General Wayne Stenehjem to facilitate communication between the Crime Lab and local law enforcement agencies and to enhance customer service. Lonnie will be adding these duties to his regular workload at BCI.

C/A Grabowska will be the point of contact for law enforcement agencies regarding communication to and from the Crime Lab, and will provide assistance on case status updates, case prioritization, evidence procedures and requests for service.

"It is a wonderful opportunity to be able to work with such a professional group of people and to be the individual who helps law enforcement to understand the true value of their discipline," said Lonnie.

Contact C/A Grabowska

- Office: (701) 328-5530
- Cell: (701) 220-7025
- E-mail: lgrabowska@nd.gov

Rx drug

The Hastings Star-Gazette

Synthetic marijuana nearly claims life of Hastings teen

Published: June 11, 2010 7:45:17 AM CDT

Stacy Huberty was scared, really scared when her 14-year-old son overdosed recently. Then she got mad. The "drug" he overdosed on, a new "synthetic marijuana," she found out, and is sold legally. Her son, she said, is having enough trouble staying straight, staying off the real thing.

Her next step, that same day, was to write an open letter to the editor, to alert other parents and the community to the dangers of the new "legal" method being used for a high.

"Herbal Incense, also known as "Spice" or "K2" is made up of herbs and chemical components related to marijuana. It's illegal in a few states, and other states are racing to pass laws to ban the substance.

A Dakota County Drug Task Force officer said the herbs and synthetic chemical compounds in the mix are legal.

"But the chemical compounds used to make the THC are 100 times more potent than the THC in marijuana," he said. It's legal to sell and legal to buy, but the side effects are unlimited – heart palpitations, agitation, vomiting, and the lowering of the potassium levels in the body can stop a person's heart.

"The agency is getting information from people on the streets and so far, we don't know any place it's being sold in Hastings." But he said it's being sold in the towns surrounding Hastings.

Stacy's son was home from a treatment center and halfway house on a 48-hour pass, his first. He is getting help for his addiction to marijuana.

A relative who was supposed to be with him, left him alone for a short while. But the "short while" was long enough for trouble to happen in a big way.

Stacy got a frantic call from her 25-year-old daughter last week.

"Mom, you need to get over here right away," Stacy said her daughter told her. "Something's wrong with (her son)."

Stacy raced to her van and drove the 12 blocks.

"I was horrified when I got there," Stacy said. "My son was lying on the bathroom floor, sweating and vomiting. The sweat was just dripping off his face, and he was confused.

"We got him out to the van, and I dialed 9-1-1 as I drove.

"Then my son slumped in the seat, and I reached over to touch him. His skin was clammy and cold.

"I was speeding to get him help, and I was upset, crying."

As she pulled her van up to the emergency entrance at Regina, personnel came running out and rushed him in. Stacy said as a veteran nurse, she knew he was in good hands.

"I moved my van, signed the release to treat him and gave them my insurance information.

"I was brought back to my son. He was on an IV and a heart monitor. He was barely responding. They were pouring potassium into him through the IV, because the level in his system was so low. And when it gets low, it can effect the heart. They made him drink it, too, when he started coming around."

The police came to the hospital soon after she got there. She told them what had happened when they showed up; the police in this case were there not because they were notified of an overdose but because Stacy had made a call to 9-1-1. Other than being supportive, there was nothing they could do to help her.

Five hours after her ordeal started, her son was released to her.

Stacy is not a woman who hides from problems. She also doesn't hide the problems from others if she thinks the knowledge can help them. That's why she's stepping forward. Her son wanted to talk, too, but in the end, he just didn't feel he could do it yet.

Like many parents, Stacy's done a lot or research about chemicals. With four children and a medical background, she wanted to know what she, and her children, were facing.

"Having a 16-year-old and a 14-year-old, I hear, and overhear, about what kids are using. And I know they're doing it at younger and younger ages," she said.

She also learned a lot, she said, going through chemical issues with both her sons. Her daughters, she said, never faced the same issues and excelled in school, with sports and the good grades. But her older son spent time at Hazelden Treatment Center. That and a stint in the Army helped him mature, she said. Now he tries to mentor his younger brother.

Her younger son started with alcohol, Stacy now believes.

"I wasn't aware," she said. "But marijuana really got him started – it's his drug of choice – about a year and a half ago. I think I found it in his jeans pocket.

"'I just tried it ... I'll never do it again ... Blah, blah, blah.' Those were his answers," Stacy said.

"I slept on the couch so I could catch him if he tried to sneak out. I set an early curfew. The most important thing was to keep him alive. When a friend of his got him to try Ecstasy, it really scared him, and he told me about it.

"At that point, I knew." And that's when he entered treatment.

And she's reaching out to other parents, looking for a new Al-Anon group, just for parents of teenagers with a chemical dependency. She invites anyone interested to call her at 651-319-6128.

"There are lots of Al-Anon groups, NA (Narcotics Anonymous) groups; unfortunately they're all geared to spouses," she said. "We need to get a couple of good groups going for parents. We need to start networking.

"It's our job as parents. Kids across all demographics use. The key is what you (as parents) do about it."

"I think people should know that I have some background," she said. "For years, I was the charge nurse in a detox facility. And now I'm a certified instructor for "Driving with Care," offering classes for those who have had DWIs. I love doing it. "

As for her son, she knows he's not ready to return home yet.

"We talked about it (the Spice he smoked)," Stacy said. "He said it was the most horrible thing he'd ever smoked. He said he felt like he could feel the blood moving through his arms, chest and neck, and he thought he was going to die."

Tags: local news, news, Hastings, fccnetwork

New drug fad is legal in Minn., not N.D.

By Mike Nowatzki
Forum Communications Co.

A middle-aged woman in the pink halter top strolled into the Moorhead store and headed straight for the herbal incense.

Flipping through the shiny plastic packets, she found one she hadn't tried before, a black bag labeled "Smoke XXXX."

After shelling out $50 for the 3-gram pouch, she climbed into her minivan and tore open the package.

Carefully, she poured the potpourri-like substance into her "Stairway to Heaven" hitter box (a small container normally used for marijuana), loaded up her cigarette-style pipe and fired it up.

She took a drag, drawing the smoke deep into her lungs, and waited for the high to arrive.

The woman confessed to a Forum reporter by her side that she had "not a clue" about the name or nature of the mind-altering substance sprayed on the incense.

The packaging didn't list the drug in the ingredients, but it did warn that the incense was "not for human consumption."

"But actually it is," she said.

Asked how she knows, she said, "Because I smoke it and I'm still alive."

The woman spoke to The Forum on condition of anonymity, fearful she would lose her job at a local financial institution.

With the rest of the purchasing it online. But since the Board of Pharmacy issued an emergency rule on Feb. 25, defining several chemicals that are sprayed on the incense as controlled substances and thereby making them illegal to possess or sell, the company will no longer mail it to her home.

So, she goes to Moorhead, where the incense is sold at Discontent, Mellow Mood and Mother's Music.

Moorhead police know it's being sold, but they haven't encountered it on the street or received any reports from hospitals that it's causing health problems, Lt. Brad Penas said.

Still, he'd like to see Minnesota follow the lead of North Dakota and a growing number of states racing to ban it.

"It's not a good thing for us to be having for sale over here, making it legal for somebody that's 18 years old to walk in, purchase it and turn around and walk out and sell it to a kid that's 14 and there's no repercussions for anybody," said Penas, who oversees the department's narcotics division.

Minnesota Board of Pharmacy Executive Director Cody Wiberg said his office had "not received a single call from anyone about this" until a phone call from The Forum last week.

The board just finished a major revision of its Schedule I controlled substances a couple of months ago, he

"It's just blossoming around the country."

Anthony Scalzo
director, Missouri Poison Control Center

200/110 (for adults, 120/80 is considered healthy).

The symptoms aren't typical of someone who smokes marijuana, he said. In a few cases, K2 users reported tremors and hallucinations.

By mid-May, poison centers nationwide had logged 352 similar cases in 35 states. As of Thursday, the total stood at 545 cases in 41 states, according to the American Association of Poison Control Centers.

"It's just blossoming around the country," Scalzo said.

K2 lab tests found the incense had been sprayed with a compound called JWH-018 — a chemical originally synthesized in 1995 by a graduate student of research professor John W. Huffman at Clemson University — or the related JWH-073.

The chemicals, known as synthetic cannabinoids, act on the same brain receptors as THC, the active ingredient in marijuana.

Huffman said JWH-018 "was not designed to be a super-THC." He points out there are no valid, peer-reviewed studies of the compound's effects on humans, or any data regarding its toxicity.

"It should absolutely NOT be used as a recreational drug," he wrote in a blanket response to e-mailed ques-

is waiting for Attorney General Wayne Stenehjem's review and approval, said Anderson, the board's director. It will be introduced as legislation in 2011, he said.

For law enforcement purposes, it's already in effect.

Under state law, anyone found in possession of a controlled substance without a doctor's prescription may be charged with a Class C felony, or a Class B felony if they're within 1,000 feet of a school.

However, in the case of marijuana, possession of one ounce or less is a misdemeanor — in other words, the law is harsher when it comes to what some consider imitation marijuana than for the real thing.

Ryan Zueger, co-owner of Big Willies in Mandan, N.D., where customers used to be able to buy Spark 20 and 10 other brands of the incense, said 50 percent or more of his sales came from the product prior to the board's action, which he criticized as overreaching and being done in an emergency meeting without public notice.

The board action was prompted in large part by two teenagers who wound up in a Bismarck emergency room after injecting stardust, a stimulant mixed with bath salts that produces a high that's been compared to cocaine or

Drugs banned

The North Dakota Board of Pharmacy took emergency action in February to classify seven drugs that mimic the effects of marijuana or methamphetamine as "Schedule I" controlled substances, making them illegal to possess or sell. They are:

- JWH-018
- JWH-073
- HU-210
- HU-211
- CP-47,497 and homologues
- mephadrone
- 3-4-methylene dioxyprovalerone

Source: Fargo Police Department

ing car accident, he said.

But Anderson said the lack of information on the packaging is what creates the potential for harm.

"People buy this stuff and they think, 'Well, it's for sale, must be OK.' But it isn't," he said.

Staying competitive

Bredell, the Mother's Music co-owner, said the only reason his record store carries the incense is because customers requested it "and we got sick of giving people the address of our competitors."

"The music business is struggling, and we're just trying to stay competitive to similar businesses," he said.

As for how customers are using the product, he said, "We sell it as incense, and I guess that's all I can say about that."

A manager at Mellow Mood who spoke to The Forum about the incense refused to give his last name for attribution. He provided the e-mail address of the store's owner, who didn't return a message seeking comment.

Staff at Discontent also declined comment and provided a phone number for the store's owner, who couldn't be reached for comment.

The Mellow Mood manager said he believes some customers from North Dakota still don't realize it's illegal there. He said he won't be surprised if the product is eventually outlawed in Minnesota, given the reaction in other states.

Legislation likely in Minnesota

It's uncommon for a drug to be banned in North Dakota and not in Minnesota, but there are exceptions — although one of them is about to expire.

Salvia divinorum, a mint herb native to Mexico, and its active ingredient, salvinorin A, were banned by the North Dakota Legislature in 2007.

Minnesota lawmakers caught up last spring approving a ban that takes effect Aug. 1.

Mike Nowatzki is a reporter for the Forum of Fargo-Moorhead, which is owned by Forum Communications Co.

The woman spoke to The Forum on condition of anonymity, [redacted] she would lose h[redacted] a local financial institu[redacted]

With the rest of the incense still in her hitter box, she drove away from the parking lot and turned toward her home in North Dakota, where the substance she'd just ingested was outlawed in February.

As she crossed the Red River into Fargo, she committed a felony.

And she's not alone.

Since May 1, Fargo police have arrested or sought charges against at least a dozen people for possessing synthetic drugs that mimic the high produced by smoking marijuana, Lt. Pat Claus said.

The chemically enhanced incense is legal in Minnesota. It's commonly known as Spice or K2, but also sells under a host of other names. Among those seized by Fargo police are Spark 10, Fire N' Ice, Karma Kind and California Dreams.

'Not a good thing'

Nowhere on the packaging does it instruct the user to smoke the incense in a pipe. But the way the product is marketed often appears to be less of a "wink, wink" and more of an emphatic nod. For instance, one website selling a brand of premium Spice offers a free pipe with an order of 2 grams for $34.99.

"They know that the manufacturer who put that stuff on there intended them to smoke it and get the hallucinogenic benefits," said Howard Anderson, executive director of the North Dakota State Board of Pharmacy.

The woman who recently purchased incense in Moorhead used to have it delivered to her Fargo home after [illegible] a phone call from The Forum last week.

The board just finished a major revision of its Schedule I controlled substances a couple of months ago, he said.

"Based on what I know right now, even though we have to do more research, I probably will have our board begin the rulemaking process to place these in Schedule I," he said.

Mother's Music co-owner Brady Bredell said the store carries the product because its competitors do, and will continue as long as it's legal. He said he hopes North Dakota will reconsider and make possession of the substance a misdemeanor offense, at most.

"The potential is, they're going to be locking up their own sons and daughters and putting them in prison for this," he said.

Usage blossoms

Every morning at the Missouri Poison Center, Director Anthony Scalzo sits down and scans through the list of calls from the day before.

In November, he noticed one call referring to a marijuana substitute. He noted a few similar calls in December, and about a dozen more in January.

The callers, he said, were mostly emergency room doctors reporting patients who had smoked K2. They had become extremely agitated and anxious, with accelerated heart rates and blood pressures as high as [illegible] ing its toxicity.

"It should absolutely NOT be used as a recreational drug," he wrote in a blanket response to e-mailed questions.

Scalzo said the unknowns of chemically enhanced incense is what concerns health officials.

"You don't know what you're getting. You don't know what's in there. There's no quality control," he said.

Emergency action taken

The North Dakota Board of Pharmacy raised similar concerns when it took emergency action classify JWH-018 and six other chemicals as Schedule I controlled substances earlier this year.

North Dakota law states that the board shall place a substance under Schedule I if it has "high potential for abuse" and no accepted medical use in treatment.

North Dakota is one of three states where JWH-018 and other drugs used in incense blends are illegal, the others being Kansas and Kentucky.

Bans take effect Thursday in Alabama, Georgia and Tennessee. Lawmakers in seven other states have either approved bans that are awaiting a governor's signature or are considering bans.

North Dakota's emergency rule took effect Feb. 26, the day after the board passed it. The board adopted it as a final rule in May and [illegible] up in a Bismarck emergency room after injecting [illegible] dust, a stimulant mixed [illegible] bath salts that produces a high that's been compared to cocaine or methamphetamine. (The Moorhead shops don't carry stardust.)

Zueger said his shop stopped selling stardust two days before the board outlawed its active ingredient, mephedrone, and a second stimulant.

"If people are going to get hurt, I don't really want to carry that product," he said.

But the board went a step further in also banning JWH-018 and four other drugs sprayed on incense.

"We just decided, let's schedule them all and make it illegal to possess or sell them," Anderson said.

Zueger said the board jumped the gun without evidence the incense causes negative health effects. The incense is sold as aromatherapy, he said, and some people prefer it to prescription painkillers. One customer from Montana dropped by every two to three weeks to buy it for his son who was in a debilitat- [illegible] similar businesses," he said.

As for how customers are using the product, he said, "We sell it as incense, and I

[illegible] reporter for the Forum of Fargo-M[illegible], which is ow[illegible] Commu[illegible] Co.

Public Notice

REQUEST FOR PROPOSAL (RFP)
ISSUED ON THE BEHALF OF
North Dakota Public Employees Retirement System (NDPERS)
For
Group Health Insurance Coverage

PROPOSALS DUE: July 30th, 2010, 5:00 PM (CT)

NDPERS is seeking qualified insured proposals for its group health plan. Details of the plan are:

1. Covers active and retired employees of the state of North Dakota and its affiliates.
2. In total, there are approximately 20,000 active employees and 5,500 retirees eligible to participate in the plan.
3. Respondents must be appropriately licensed or willing to be licensed in North Dakota.

Information concerning this solicitation and the Request for Proposal document may be found at: http://www.nd.gov/ndpers/providers-consultants/consultants/rfp-index.html

This website will contain the RFP's, Q&A's, any addenda, schedule changes and other important information. Bidders should check these electronic pages regularly.

Questions should be submitted as indicated in the RFP.

June 28, 2010

Senate Bill 2119

Judiciary Committee, January 19, 2011

Synthetic Cannabinoids
Charlene Schweitzer, Forensic Scientist
Office of Attorney General, Crime Laboratory Division

Synthetic Cannabinoids have been a hot topic around the state, nation, and all around the world. These are compounds that bind to the brain's cannabinoid receptors the same way as THC, the psychoactive ingredient in Marijuana. There are hundreds of synthetic cannabinoid compounds, with most having a completely different chemical structure than THC, a schedule I controlled substance. There are three types of cannabinoids: traditional cannabinoids, which are naturally found in Cannabis (Marijuana), endocannabinoids, found naturally in the body, and synthetic cannabinoids, which are synthesized in the laboratory. These synthetic compounds give users a "high" similar to THC but the short and long term effects are unknown.

The synthetic compounds are commonly dissolved into a solvent and sprayed onto herbal smoking mixtures which are labeled "not for human consumption" and sold as incense or room deodorizers. Numerous different brand names of these plant material blends have surfaced around the world. (Spice, Sparks, K2, etc) The brand names are not important since the composition of these products can change from batch to batch, both qualitatively and quantitatively.

The brain has two cannabinoid receptors, referred to as CB1 and CB2, which are responsible for a variety of physiological processes including appetite, pain sensation, mood and memory. The CB1 receptor is associated with the central nervous system and the CB2 receptor is associated with the immune system and anti-inflammatory properties. Compounds that bind more strongly or have higher affinity for the CB1 receptor are thought to be responsible for the pharmacological effects.

In 1964, tetrahydrocannabinol was identified as the pharmacological active compound in Marijuana. In the late 1960's, THC analogs started being developed by the pharmaceutical industry and academic laboratories to be investigated as potential pharmaceutical agents. In the 1970's, the cyclohexylphenols were developed by Pfizer pharmaceutical company and were different from traditional cannabinoids because of their dissimilar chemical structure. In 1988, the cannabinoid receptors were discovered and in 1992 the first of the endocannabinoids was identified, which are inherent to the human body.

In the 1990's, hundreds of the JWH compounds were originally synthesized and named by Dr. John W. Huffman, a Clemson University organic chemist. Dr. Huffman was studying the differing affinities these compounds have for the cannabinoid brain receptors by researching on rats, whose CB1 receptor is said to be virtually identical to the human CB1 receptor.

In 2004, smokable herbal mixtures under the brand name "Spice" began being sold on the internet and in headshops. It wasn't until 2007 that monitoring was begun, but there was little data on the psychoactivity of the products or even what active ingredients the products actually contained. In December of 2008, JWH-018 was identified as the major component of some Spice products. CP 47,497, HU-210, JWH-073, JWH-250, along with a few others, were all identified as being components to herbal smoking blends in 2009. In September of 2009, the brand "K2" was reported throughout Kansas's schools and created a large amount of national media attention. During 2010, as states enacted laws to control some of these synthetic cannabinoids, compounds were emerging that had never been researched before. This indicates a high level of sophistication on the part of the chemists synthesizing the compounds.

The composition of these product blends continues to change. There have been reports of some blends containing up to six synthetic cannabinoids, the combined effects of which are unknown. As some compounds become controlled, new synthetic cannabinoids are being introduced to replace the ones that have become illegal. The detailed pharmacology of these synthetic compounds is unknown and there is a large number of potential cannabinoids that could be synthesized.

The United Kingdom has taken a unique approach to this problem. In August of 2009, to ensure that any legislative changes are not easily circumvented by manufacturers changing the compounds added to the plant based mix, the Advisory Council on the Misuse of Drugs in the UK recommended controlling specific chemical classes rather than specific chemical compounds. The cannabinoids fall into eight major groups, with the UK controlling groups 1-6:

1-Naphthoylindoles
2-Naphthylmethylindoles
3-Naphthoylpyrroles
4-Naphthylmethylindenes
5-Phenylacetylindoles
6-Cyclohexylphenols
7-Classical Cannabinoids (Dibenzopyrans)
8-Endocannabinoids (Inherent to the body)

Recently, three new synthetic cannabinoids have surfaced that belong to a ninth group, called Benzoylindoles.

One of the major challenges in identifying these new compounds is the lack of authenticated standards. In order to make an identification of a compound, forensic labs must purchase an authenticated reference standard from a reputable chemical company and run it on their instruments under their conditions. Some of these compounds are so new that there isn't a standard available at this time and a "tentative" identification has to be made.

Here in North Dakota, we have identified nine different synthetic cannbinoids and in addition to these, other states have identified an additional ten compounds.

North Dakota	Other States:
JWH-018	JWH-015
JWH-073	JWH-251
JWH-250	JWH-019
JWH-081	JWH-122
JWH-200	JWH-210 (Tentative)
RCS-8	JWH-398
CP 47,497	AM-694 (Tentative)
CP 47,497 (DMOH)	RCS-4
AM-2201 (Tentative)	WIN 48,098
	JWH-007

AMENDMENTS TO SENATE BILL NO. 2119

To: Sen. Nething, Chairman Senate Judiciary Committee

From: Thomas Trenbeath, Chief Deputy Attorney General

Re: SB 2119

Date: February 3, 2011

Attached are the proposed amendments to SB 2119 that incorporate technical but more accurate and comprehensive definitions, of the cannabinoids (marijuana like substances), particularly the new synthetic substances that have appeared on the market recently.

The amendment covers not only specific chemicals, but chemical groups that contain isomers or chemical variants of the primary banned substances. This will prevent sellers of synthetic drugs from attempting to avoid prosecution by manufacturing slightly altered isomers or salts of cannabinoid chemicals.

Cannabinoid from Wikipedia --
Cannabinoids are a class of chemical compounds which include the phytocannabinoids (oxygen-containing C21 aromatic hydrocarbon compounds found in the cannabis), and chemical compounds which mimic the actions of phytocannabinoids or have a similar structure (e.g. endocannabinoids, found in the nervous and immune systems of animals and that activate cannabinoid receptors). The most notable of the cannabinoids is Δ9-tetrahydrocannabinol (Δ9-THC—the primary psychoactive compound of cannabis).
Synthetic cannabinoids encompass a variety of distinct chemical classes: the classical cannabinoids structurally related to THC, the nonclassical cannabinoids including the aminoalkylindoles, 1,5-diarylpyrazoles, quinolines and arylsulphonamides, as well as eicosanoids related to the endocannabinoids.

Cannabis from Wikipedia, the free encyclopedia -Cannabis, also known as marijuana (sometimes spelled "marihuana") among many other names, a[›] refers to any number of preparations of the Cannabis plant intended for use as a psychoactive drug. The word marijuana comes from the Mexican Spanish marihuana. According to the United Nations, cannabis "is the most widely used illicit substance in the world." The typical herbal form of cannabis consists of the flowers and subtending leaves and stalks of mature pistillate of female plants. The resinous form of the drug is known as hashish (or merely as 'hash'). The major psychoactive chemical compound in cannabis is Δ9-tetrahydrocannabinol (commonly abbreviated as THC). Cannabis contains more than 400 different chemical compounds, including at least 66 other cannabinoids (cannabidiol (CBD), cannabinol (CBN) and tetrahydrocannabivarin (THCV), etc.) which can result in different effects from those of THC alone.

Proposed Amendments to Senate Bill No 2119

Page 5, line 14, replace "5-Methoxy-N,N-Dimethyltrytamine" with "5-Methoxy-N,N-Dimethyltryptamine"

Page 7, line 2, after "chemicals" insert "and chemical groups"

Page 7, replace lines 5 through 17 with:

"(1) Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

a. 1-Pentyl-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678

b. 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073

c. 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081

d. 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200

e. 1-Propyl-2-methyl-3-(1-naphthoyl)indole – Other names: JWH-015

f. 1-Hexyl-3-(1-naphthoyl)indole – Other names: JWH-019

g. 1-Pentyl-3-(4-methyl-1-naphthoyl)indole – Other names: JWH-122

h. 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole – Other names: JWH-210

i. 1-Pentyl-3-(4-chloro-1-naphthoyl)indole – Other names: JWH-398

j. 1-(5-fluoropentyl)-3-(1-naphthoyl)indole – Other names: AM-2201

(2) Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

a. 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane – Other names: JWH-175

b. 1-Pentyl-1H-indol-3-yl-(4-methyl-1-naphthyl)methane – Other names: JWH-184

(3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone – Other Names: JWH-307

(4) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include *E*-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane – Other Names: JWH-176

(5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent. Examples include:

a. 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole – Other names: RCS-8

b. 1-Pentyl-3-(2-methoxyphenylacetyl)indole – Other names: JWH-250

c. 1-Pentyl-3-(2-methylphenylacetyl)indole – Other names: JWH-251

d. 1-Pentyl-3-(2-chlorophenylacetyl)indole – Other names: JWH-203

(6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl

group whether or not substituted in the cyclohexyl ring to any extent. Examples include:

a. 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol – Other names: CP 47,497

b. 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol – Other names: Cannabicyclohexanol and CP-47,497 C8 homologue

c. 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol – Other names: CP 55,940

(7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples include:

a. 1-Pentyl-3-(4-methoxybenzoyl)indole – Other names: RCS-4

b. 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole) – Other names: AM-694

c. (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone – Other names: WIN 48,098 and Pravadoline

(8) Others specifically named:

a. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a tetrahydrobenzo[c]chromen-1-ol - Other names: HU-210

b. (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: Dexanabinol and HU-211

c. 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone – Other names: WIN 55,212-2

Page 12, after line 12, insert

c. Immediate precursors to Fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

Renumber accordingly

NDLA, S JUD

[redacted]m: NDLA, Intern 04
[redacted]t: Thursday, January 20, 2011 8:04 AM
To: NDLA, S JUD
Subject: FW: SB 2119
Attachments: image006.gif; image007.jpg; image008.jpg; image003.jpg; image009.jpg

From: Brocker, Liz
Sent: Thursday, January 20, 2011 7:45 AM
To: NDLA, Intern 04
Subject: SB 2119

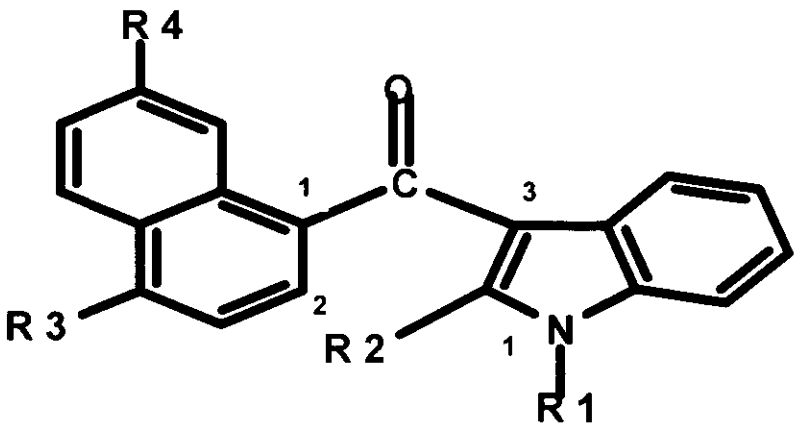
As indicated, here are photos of some of the different packets of the synthetic cannabinoids which were the subject of Attorney General Stenehjem's testimony on SB 2119 yesterday. I will also forward a copy of the charts used by the forensic scientist in her testimony. Liz

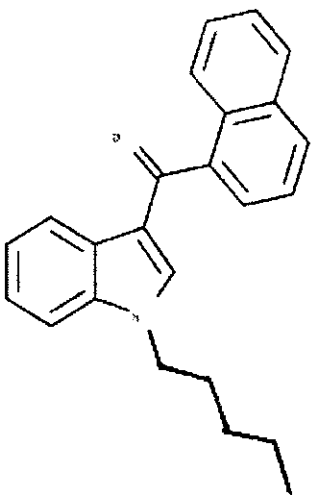

an eight
3.5g when packed


K2
Summit

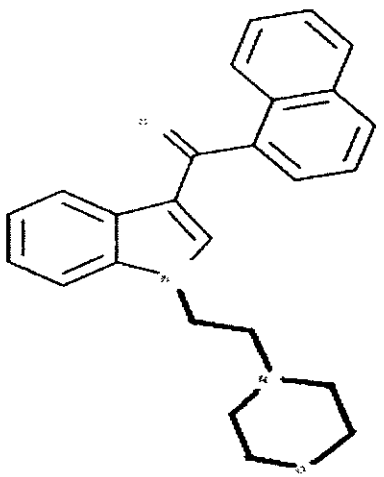

Spice
GOLD

NAPHTHOYLINDOLES

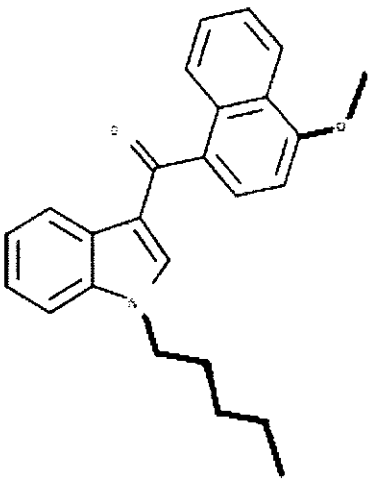




JWH-018



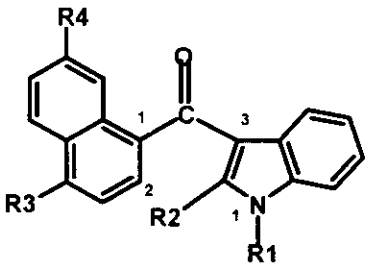
JWH-200



JWH-081

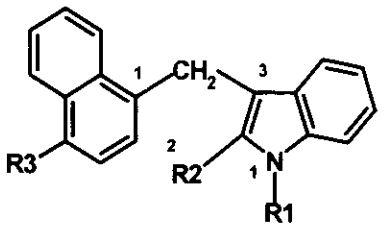
GROUPS OF CANNABINOIDS

GROUP 1



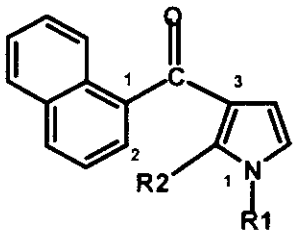
NAPHTHOYLINDOLES

GROUP 2



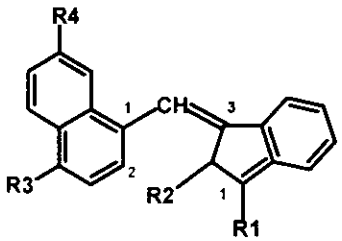
NAPHTHYLMETHYLINDOLES

GROUP 3



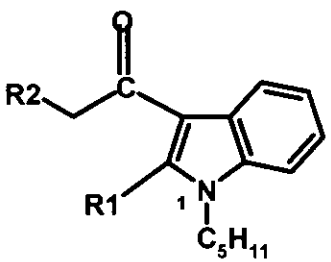
NAPHTHOYLPYRROLES

GROUP 4



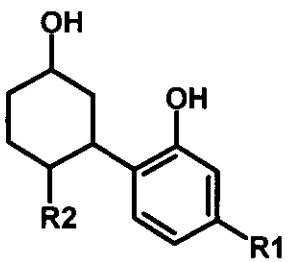
NAPHTHYLMETHYLINDENES

GROUP 5



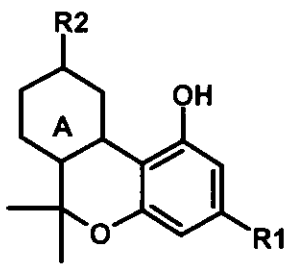
PHENYLACETYLINDOLES

GROUP 6



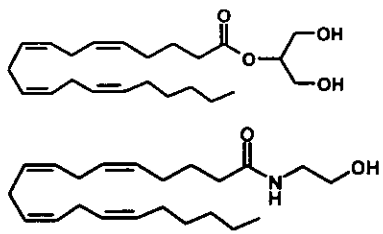
CYCLOHEXYLPHENOLS

GROUP 7

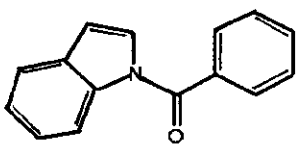


CLASSICAL CANNABINOIDS

GROUP 8



ENDOCANNABINOIDS



***GROUP 9: BENZOYLIN ES**

HDMA
Healthcare Distribution Management Association

January 25, 2010

Senate Judiciary Committee
Senator Dave Nething, Chairman
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Dear Chairman Nething:

On behalf of the Healthcare Distribution Management Association (HDMA) and its twelve full-service wholesale drug distributor members doing business in North Dakota, I submit the following comments regarding S.B. 2119. Each and every day, HDMA member companies safely and efficiently deliver nine million healthcare products to more than 165,000 pharmacies, hospitals, nursing homes, physician offices and clinics in every state in the nation. In fact, nearly 80% of all prescription medicines in this country go through an HDMA member distribution facility on the way from the manufacturer to the pharmacy setting.

As an advocate for the safe, reliable, and efficient distribution of the nation's healthcare products supply, HDMA recognizes the committee's concerns with propofol's abuse potential. However, we believe this legislation will have a consequence on distribution that we believe may be unintended. Classifying products that contain propofol as a Schedule IV controlled substance will require that distributors in North Dakota place those products in cages within secure warehouses. Schedule IV designation would significantly change current inventory practices and safeguards. These requirements are set forth in 21 C.F.R. §1301.72(b).

Drug distribution centers are highly regulated, secure, restricted access facilities that must pass regular inspections conducted by both the United States Drug Enforcement Administration (DEA) and the North Dakota Board of Pharmacy. Distribution facilities that are currently licensed to distribute other controlled substances are subject to multiple security and recordkeeping procedures that include: (1) employee screening; (2) restricted access; (3) alarm systems; (4) self-locking and self-closing doors; and (5) inventory control systems.

As a result, DEA registered controlled substance distributors meet the objectives of S.B. 2119 – storing products in a secure, restricted access, highly monitored location with strict recordkeeping requirements. Because of these tight controls, distribution facilities have not been a source of propofol diversion. HDMA asks you to consider including the following exemption language in S.B. 2119:

"This section does not apply to wholesale drug distributors licensed and regulated by the North Dakota Board of Pharmacy and registered with and regulated by the United States Drug Enforcement Administration and exempts them from storage, reporting, recordkeeping or physical security control requirements for controlled substances containing propofol."

In related state legislation, twelve states that have passed legislation or regulations classifying pseudoephedrine as a controlled substance have included a specific exemption for wholesale drug distributors. These states recognize that subjecting wholesale distributors to any additional requirements in terms of storage or recordkeeping would be duplicative in light of the strict controls that are already imposed at both the federal and state level.

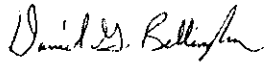
901 North Glebe Road • Suite 1000 • Arlington, VA 22203
(703) 787-0000 • (703) 935-3200 (Fax) • www.HealthcareDistribution.org

Propofol is unique in that construction and other operational changes within warehouses will be necessary in order to store it in the required secure areas. Wholesale distributors stock a large enough volume of propofol that in certain instances, the current cages in wholesalers' warehouses will need to be expanded to hold the usual levels of product kept in stock. Further, propofol has unique storage temperature requirements. According to the package insert, the most commonly sold brand of propofol, Diprivan®, must be stored according to the manufacturer's specified temperature range of 4° to 22°C (40° to 72°F). This is an unusual temperature for drug product storage and means that propofol is held at temperatures cooler than warehouses' room temperature, but warmer than typical refrigerators. Space within the cages will need to accommodate not only the additional products, but also the equipment or other features needed to cool the product (e.g. dedicated refrigeration units).

HDMA also sent similar comments to the DEA on December 21, 2010 regarding their proposed rule that would make propofol a Schedule IV controlled substance [Docket No. DEA-338; Proposed Rule: Schedules of Controlled Substances: Placement of Propofol Into Schedule IV; 75 Fed. Reg. 66195]. Of particular note is the fact that neither DEA's proposed rule preamble nor the background materials include any evidence of a problem of theft or diversion within wholesale distribution warehouses that warrants the placement of propofol in cages. In addition, there is no mention of current warehouse storage practices being inadequate, or reference to wholesale distribution warehouse security as a means of reducing propofol's abuse potential.

If you have any questions, need additional information or are interested in touring the operations at a distribution facility, please do not hesitate to contact me at 703-885-0236.

Sincerely,



Daniel G. Bellingham
Director, State Government Affairs
Healthcare Distribution Management Association

cc: North Dakota Board of Pharmacy

BOARD OF PHARMACY
State of North Dakota

Jack Dalrymple, Governor

OFFICE OF THE EXECUTIVE DIRECTOR
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Rick L. Detwiller, R.Ph.
Bismarck, President
Gary W. Dewhirst, R.Ph.
Hettinger
Laurel Haroldson, R.Ph.
Jamestown
Bonnie J. Thom, R.Ph.
Granville
Gayle D. Ziegler, R.Ph.
Fargo
William J. Grosz, Sc.D., R.Ph.
Wahpeton, Treasurer

Senate Bill No 2119
House Judiciary Committee
Prairie Room – State Capitol Bldg
9:00 AM – Monday – March 7th, 2011

Chairman Dekrey and members of the House Judiciary Committee, thank you for the opportunity to speak with you today.

Senate Bill No. 2119 is the biennial bill introduced by the State Board of Pharmacy to bring the Controlled Substances scheduling up-to-date with what the Food & Drug Administration [FDA] and Drug Enforcement Administration [DEA] have done over the past two years. This bill also adds synthetic spice cannabinoids and two substances in the mephedrone class, with which we have recently had trouble, in North Dakota.

The first addition you will see is on page 5 line 14, 5-Methoxy-N,N-Dimethyltryptamine
I am including a copy of the Federal Register describing the DEA action on this substance.

On page 6 line 17 we have changed some of the language to describe more explicitly the tetrahydrocannabinols derived from the plant materials of the genus Cannabis.

On page 7 beginning on line 1 we have included a description of the synthetic cannabinoids, some of which were scheduled by the Board of Pharmacy under the rule making process and under a temporary placement by the DEA pending final action. I am including a copy of the rule and the Federal Register notice. Many of these substances were synthesized by a researcher named JW Huffman who has been responsible for most of the research on them in order to determine if there were any practical human drug uses for the products. I am including a copy of an article from Michelle Glinn, which describes some of the ways these products are used. This action also serves to move these substances from the rule into the statute. When we were working on the issue of spice cannabinoids in the Senate we struggled with the issue you may have heard about in the press, of there being about 450 or so of these chemical compounds and that the marketers just move to a different compound every time one is listed on a schedule. Therefore, we collaborated with the Attorney General's office and the State Crime Lab, where their representative has been working nationally on an approach which captures these substances in categories. This allows you to make it clear that the groups of these chemicals are illegal to be sold and used and the ones listed in the original bill are now listed as examples of these chemical classes. Thus it is made clear that all of these substances, which do not have an approved medical use, are now scheduled under schedule I. This makes it clear that marketing these substances for smoking or other purposes is *not* an approved activity in North Dakota, and that you are not interested in waiting until someone

is hurt and then taking a reactive position to try and conduct another emergency scheduling.

On page 10 line 28 through page 11 line 1 we have mephedrone and similar substances, which we discovered were being abused and being injected intravenously by some young people in Bismarck who ended up in the hospital. These substances are stimulants. We initially assumed the substance used was mephedrone, but as you will see on the copy of the State Laboratory report it proved to be a slightly different substance, so we scheduled both of them. All of the above substances will be in Schedule I, as they have no approved medical use in the United States.

On page 13, line 24 is a drug called tapentadol, which is an approved drug and is being placed into Schedule II. I am including a copy of the Federal Register mirroring this action.

On page 14, line 24 we have added, as indicated in the Federal Register, one of the precursors of fentanyl, which of course is one of the substances used to manufacturer these products.

In Schedule III on page 20 line 15 is an effort to establish language to accommodate the generic versions of delta-9 tetrahydrocannabinol, which was originally marketed in a drug product Marinol and now as generics of that product come out there needs to be language to accommodate them.

In Schedule IV on page 21 line 24 you will see a drug, carisoprodol. This drug is currently widely used and is found in many of the drug seizures we have, along with other drugs. We do collect data on carisoprodol in the Prescription Drug Monitoring Program [PDMP] and DEA has published a Federal Register Notice of proposed rule making; therefore this drug will probably be scheduled before you meet again and it might be wise for North Dakota to schedule it now.

On page 22 on line 11 and on page 23 line 3 are two similar drugs which are usually used as pre-anesthetic agents. Fospropofol has been finally scheduled by the DEA and Propofol listed in a notice of proposed rule making which will probably be final very soon having gained quite a bit of notoriety in the death of a famous singer and I believe his doctor is being prosecuted for it's use. I am including the Federal Register Notices for those two drugs.

On page 24 line 3 and 4 you will see pentazocine and butorphanol, which had been previously scheduled, but have been moved to this section of the federal list and we are moving them there as well.

The last two changes that we have for you are on pages 24 and 25 lines 20 and 12 respectively. Buprenorphine is now in Schedule III and Lacosamide has been scheduled by the DEA and we are matching that scheduling here. Again, I am including the Federal Register Notice.

Howard C Anderson, Jr, R.Ph.
Executive Director

Rules - 2009

R Doc E9-20204[Federal Register: August 21, 2009 (Volume 74, Number 161)] [Proposed Rules] [Page 42217-42220] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr21au09 -12]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-331]

Schedules of Controlled Substances: Placement of 5-Methoxy-N,N- Dimethyltryptamine Into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of proposed rulemaking to place the substance 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT) and its salts into schedule I of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized as proposed, this action would impose the criminal sanctions and regulatory controls of schedule I substances under the CSA on the manufacture, distribution, dispensing, importation, exportation, and possession of 5-MeO-DMT.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before September 21, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-331" on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to **dea.diversion.policy@usdoj.gov**. Comments may also be sent electronically through **http://www.regulations.gov** using the electronic comment form provided on that site. An electronic copy of this document is also available at the **http://www.regulations.gov** website. DEA will accept electronic comments containing Microsoft Word, WordPerfect, Adobe PDF, or Excel files only. DEA will not accept any file format other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because http://www.regulations.gov terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Comments and Requests for Hearing

In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of **21 CFR 1308.44** and **1316.47**. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the regulations as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (**21 U.S.C. 811**)," may request a hearing.

21 CFR 1308.42. Please note that DEA may grant a hearing only "for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment or repeal of a rule issuable" pursuant to 21 U.S.C. 811(a). All correspondence regarding this matter should be submitted to DEA using the address information provided above.

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at **http:/ /www.regulations.gov** and in the Drug

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Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the FOR FURTHER INFORMATION CONTACT paragraph.

Background

Explanation of 5-methoxy-N,N-dimethyltryptamine

5-MeO-DMT is related to the schedule I hallucinogen, N,N- dimethyltryptamine (DMT), in its chemical structure and pharmacological properties. 5-MeO-DMT also shares pharmacological similarities with several other schedule I hallucinogens such as 2,5-dimethoxy-4- methylamphetamine (DOM), lysergic acid diethylamide (LSD) and mescaline. In animal drug discrimination studies, DOM, LSD, mescaline, DMT, and alpha-methyltryptamine (AMT) fully substitute for the discriminative stimulus cue of 5-MeO-DMT. In in vitro receptor binding studies, 5-MeO-DMT, similar to DMT and other schedule I hallucinogens, binds to central serotonin 2 (5-HT2) receptors.

Studies show that the potencies of hallucinogens in humans correlate with their drug affinities for the 5-HT2 receptor and discriminative stimulus potencies. Accordingly, 5-MeO-DMT produces psychoactive effects in humans following inhalation (~6-20 mg), intravenous injection (~0.7-3.1 mg), sublingual (~10 mg), intranasal insufflation (~10 mg) and oral (~30 mg) (if encapsulated or taken with a monoamine oxidase inhibitor) routes of administration. Anecdotal reports from humans who have used 5-MeO-DMT describe hallucinogenic effects similar to those produced by DMT. 5-MeO-DMT, however, is reported to be 4 to 5-fold more potent than DMT when administered by inhalation, sublingual or oral (if encapsulated) routes of administration.

Control of 5-methoxy-N,N-dimethyltryptamine

Evidence of the abuse of 5-MeO-DMT was first reported in 1999 by federal law enforcement personnel. According to the System to Retrieve Information on Drug Evidence (STRIDE), a federal database for seized drug exhibits analyzed by DEA laboratories, from January 1999 to December 2008, law enforcement seized 33 drug exhibits and filed 23 cases pertaining to the trafficking, distribution and abuse of 5-MeO- DMT. The seized drug exhibits comprised 89 grams of powder and 10 milliliters of liquid containing 5-MeO-DMT. Since 2004, National Forensic Laboratory Information System (NFLIS), a database for drug cases analyzed by federal, state and local forensic laboratories, registered 23 state and local cases involving 27 analyzed items containing 5-MeO-DMT.

There is evidence of clandestine laboratory operations to synthesize 5-MeO-DMT. 5-MeO-DMT has been encountered in powder, capsule, and liquid forms. 5-MeO-DMT is typically abused either by smoking or insufflating the powder. Investigations by federal law enforcement indicate that individuals, especially

youths and young adults, are purchasing 5-MeO-DMT from Internet-based chemical suppliers. In addition, there are several instances where 5-MeO-DMT was sold as a counterfeit of MDMA.

The risks to the public health associated with the abuse of 5-MeO- DMT are similar to the risks associated with those of schedule I hallucinogens. 5-MeO-DMT can pose serious health risks to the user and general public through its ability to induce hallucinogenic effects and other sensory distortions and impaired judgment. Self-reports that are posted on Internet websites describe the abuse of this substance in combination with other controlled drugs such as DMT, N,N- diethyltryptamine (DET), LSD, marijuana, ecstasy, or mushrooms (contains psilocybin and psilocin). This practice of drug abuse involving combinations can pose additional health risks to the users and the general public. These data show that the continued trafficking and abuse of 5-MeO-DMT pose hazards to the public health and safety. Indeed, there have been reports of emergency room admissions and death associated with the abuse of 5-MeO-DMT.

There are no FDA-approved drug products. 5-MeO-DMT has never been approved by the FDA for marketing as a human drug product in the United States and there are no recognized therapeutic uses of 5-MeO-DMT in the United States.

References to the above studies and data may be found in the Health and Human Services scheduling recommendation and DEA's independent analysis, both of which are available on the electronic docket associated with this rulemaking.

Placement of 5-MeO-DMT Into Schedule I

In accordance with 21 U.S.C. 811(b) of the CSA, DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse of 5-MeO-DMT. On February 21, 2007, the Deputy Administrator of the DEA submitted these data to the Acting Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Deputy Administrator also requested a scientific and medical evaluation and a scheduling recommendation for 5-MeO-DMT from the Acting Assistant Secretary for Health. On December 18, 2008, the Principal Deputy Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of the DEA a scientific and medical evaluation and a letter recommending that 5-MeO-DMT and its salts be placed into schedule I of the CSA. Enclosed with the letter was a document prepared by FDA entitled, "Basis for the Recommendation to Control 5-Methoxy- Dimethyltryptamine (5-MeO-DMT) in Schedule I of the Controlled Substances Act." The document contained a review of the factors which the CSA requires the

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Secretary to consider (21 U.S.C. 811(b)). The factors considered by the Assistant Secretary of Health and DEA with respect to 5-MeO-DMT were:

(1) Actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects, if known;

(3) The state of current scientific knowledge regarding the drug;

(4) History and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under the CSA.

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (**21 U.S.C. 811**(b)), and the independent review of the available data by DEA, the Deputy Administrator finds that sufficient data exist to support the placement of 5-MeO-DMT into schedule I of the CSA pursuant to **21 U.S.C. 811**(a). The specific findings required pursuant to **21 U.S.C. 811** and **812** for 5 -MeO-DMT to be placed into schedule I are as follows:

(1) 5-MeO-DMT has a high potential for abuse.

(2)5-MeO-DMT has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of 5-MeO-DMT under medical supervision.

Regulatory Requirements

If this rule is finalized as proposed, 5-methoxy-N,N- dimethyltryptamine would be subject to regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importation and exportation of a schedule I controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports or exports 5-methoxy-N,N-dimethyltryptamine or who engages in research or conducts instructional activities with respect to 5-methoxy-N,N-dimethyltryptamine, or who proposes to engage in such activities, would be required to submit an application for schedule I registration in accordance with **part 1301 of Title 21** of the Code of Federal Regulations.

Security. 5-methoxy-N,N-dimethyltryptamine would be subject to schedule I security requirements and must be manufactured, distributed and stored in accordance with Sec. **Sec. 1301.71; 1301.72(a), (c), and (d); 1301.73; 1301.74; 1301.75(a) and (c); and 1301.76** of Title 21 of the Code of Federal Regulations.

Labeling and Packaging. All labels and labeling for commercial containers of 5-methoxy-N,N-dimethyltryptamine which are distributed on or after the effective date of a Final Rule finalizing this regulation would be required to comply with requirements of Sec. Sec. **1302.03 through 1302.07** of Title 21 of the Code of Federal Regulations.

Quotas. Quotas for 5-methoxy-N,N-dimethyltryptamine would be established pursuant to the requirements of **part 1303** of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of 5-methoxy-N,N-dimethyltryptamine upon the effective date of any Final Rule finalizing these regulations would be required to keep an inventory of all stocks of the substance on hand pursuant to Sec. Sec. 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in schedule I to handle 5-methoxy-N,N-dimethyltryptamine would be required to conduct an inventory of all stocks of the substance.

Records. All registrants who handle 5-methoxy-N,N- dimethyltryptamine would be required to keep records pursuant to **Sec. Sec. 1304.03, 1304.04 1304.21, 1304.22, and 1304.23** of Title 21 of the Code of Federal Regulations.

Reports. All registrants required to submit reports in accordance with Sec. 1304.33 of Title 21 of the Code of Federal Regulations would be required to do so regarding 5-methoxy-N,N-dimethyltryptamine.

Order Forms. All registrants involved in the distribution of 5- methoxy-N,N-dimethyltryptamine would be required to comply with the order form requirements of **part 1305** of Title 21 of the Code of Federal Regulations.

Importation and Exportation. All importation and exportation of 5- methoxy-N,N-dimethyltryptamine would be required to be in compliance with **part 1312** of Title 21 of the Code of Federal Regulations.

Criminal Liability. Any activity with 5-methoxy-N,N- dimethyltryptamine not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after the effective date of any Final Rule finalizing these regulations would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This proposed rule, if finalized, would place 5-methoxy-N,N-dimethyltryptamine into schedule I of the Controlled Substances Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws.

Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign

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based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (**21 U.S.C. 811**(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that **21 CFR part 1308** be amended as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: **21 U.S.C. 811**, **812**, **871**(b) unless otherwise noted.

2. Section **1308.11** is amended by:

A. Redesignating existing paragraphs (d)(15) through (d)(34) as paragraphs (d)(16) through (d)(35).

B. Adding a new paragraph (d)(15).

Sec. 1308.11 Schedule I.

* * * * *

(d) * * *

(15) 5-methoxy-N,N-dimethyltryptamine, its isomers, salts and salts of isomers--7431.

Some trade or other names: 5-methoxy-3-[2- (dimethylamino)ethyl]indole; 5-MeO-DMT. * * * * *

Dated: August 12, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-20204 Filed 8-20-09; 8:45 am]

Physiological Effects of K2

Michele Glinn, Ph.D., D.A.B.F.T
MSP Forensic Sciences Division, Toxicology Unit

Methods for detection of cannabinoids in biological samples have been well-established for decades. Immunoassay screens from dipsticks to fully automated analyzers are used by hospitals, probation departments, crime labs and others. A drug that has the same effects as marihuana, but is not controlled, and not detectable by the usual methods has its obvious attractions - hence the recent rise in popularity of synthetic cannabinoids.

What exactly are they? They are cannabinoid receptor agonists, mostly produced during research into cannabinoid receptor function or during the development of antiemetic or analgesic drugs. The most common are known as JWH-018 and JWH-073, and were originally synthesized by JW Huffman at Clemson University. Also known are HU-210, from Hebrew University, CP-47497 from Pfizer and several other related compounds. These chemicals have been obtained or produced by clandestine chemists, who spray them on dried plant material and sell them as incense or potpourri under names like Spice and K2. The price, $40 for 3 grams, is roughly comparable to that of mid-grade marihuana[1]. None of them are structurally related to cannabinoids, and none cross-react with current commercial cannabinoid immunoassays.

In addition to knowing what these compounds are, it is essential to understand their effects on function and their metabolic and excretion profiles. For effects, we can turn to the internet, where anecdotal reports are numerous[2]. Experiences are variable. Many users say the high is milder and the side effects, including rapid heartbeat, dysphoria (paranoia) and joint aches, more intense. Others report a high very similar to cannabis itself. Duration also varies: some users find it lasts longer than cannabis, others that it ends abruptly. The attraction for most is not that it's a better drug than marihuana, but that it's legal.

One of the first scientific reports to appear on Spice was published on-line in 2009 in the Journal of Mass Spectrometry by Auwarter et al of the University Medical Center in Freiburg, Germany[3]. In one of the oldest (if not the finest) traditions of biological research, two of the authors experimented on themselves and shared a cigarette containing 0.3 gm of Spice Diamond. They reported "considerably reddened conjunctivae, significant increase of pulse rates, xerostomia and an alteration of mood and perception." There were no psychomotor abnormalities noted, but the subjects felt impaired, and had hangover effects throughout the next day. Analysis of the herbal material showed the presence of JWH-018, CP-47497, and two compounds which were not conclusively identified but appeared to be related to the latter. One of the related compounds was also found in the subjects' blood.

The Toxicology Unit of the Michigan State Police (MSP) Forensic Sciences Division, in conjunction with Drug Recognition Experts (DREs) Sgt. Perry Curtis of the MSP Traffic Services Section, and Ofc. Jeramey Peters of the Auburn Hills Police Department, undertook a study on the physiological effects of synthetic cannabinoids. The Toxicology Unit was given two lots of K2 obtained from head shops in East Lansing

and Auburn Hills. We extracted the active compounds from the herbal material with methylene chloride. The procedure was simple and gave consistent results, most likely because the compounds were simply applied to the surface of the plant material, and did not have to be isolated from the cellular components as is the case with THC. Analysis of the extracts by GC/MS showed that the active ingredients in both samples were JWH-018 and JWH-073 (Figures 1 - 2)[3,4]. No other compounds were found. As expected, none of the extracts cross-reacted with the cannabinoid panel of our laboratory's immunoassay screen (Randox Evidence).

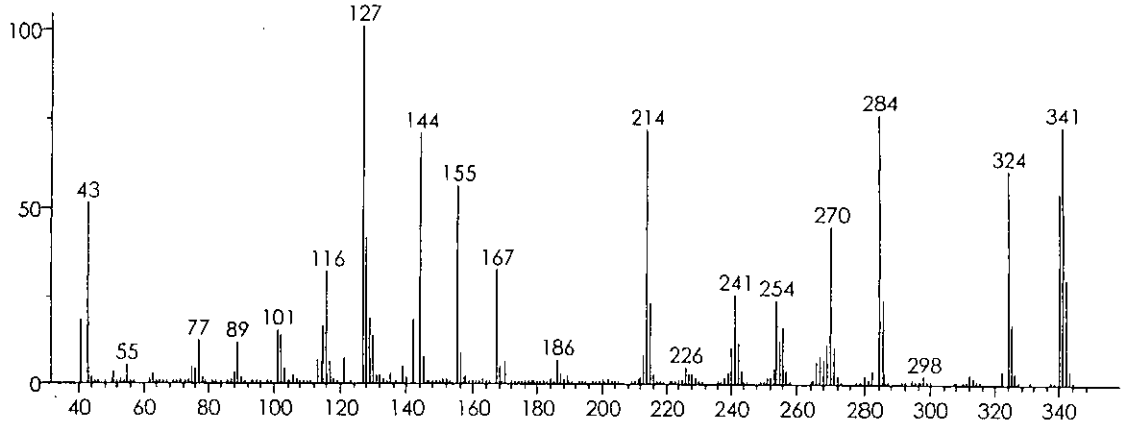

Fig. 1: GC/MS spectrum of JWH-018 extracted from K2 herbal material.

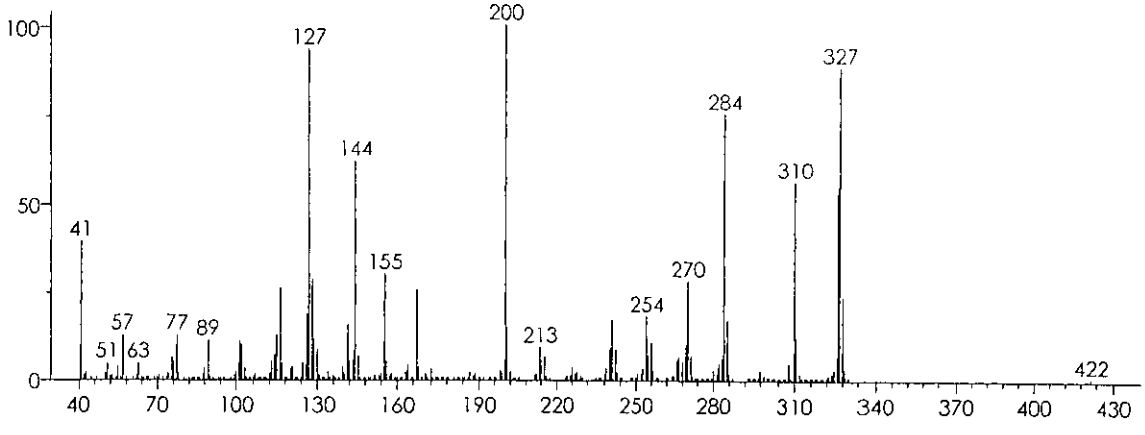

Figure 2: GC/MS spectrum of JWH-073 extracted from K2 herbal material.

Sgt. Curtis and Ofc. Peters then dosed a subject with the Auburn Hills lot of K2 as part of a plea agreement. The subject was a regular THC and K2 user, but had not used either substance in the five days before the exam. He completed a physical and DRE evaluation. Findings were normal. He was then given a bag of K2, rolled one cigarette estimated at 1.5 grams, and smoked it. Afterwards, he was taken to the booking area and completed a second DRE evaluation. Findings:

Parameter	**Pre-Dose**	**Pose-Dose**
One Leg Stand	No errors	Swayed, bent knees, leaned, nearly fell
Walk-and-Turn	One error during turn	Incorrect turn, more deliberate steps
Romberg	No sway	Visible sway
Finger to Nose	Problems locating tip of nose	Did better than pre-dose
Nystagmus	None present	None present
Convergence	Normal	Left eye unable to converge
Pupils	6.5 mm	6.5 mm Slowed reaction to light, rebound dilation
Eyes	Normal	Bloodshot, droopy
Eyelids	Normal	Tremors
Muscle	Normal	Tremors; tone normal
Pulse Rate	98	114
Blood Pressure	150/104	148/102
Temperature	98.8	99.5; skin warm to touch

Post-dose, the subject had increased body temperature and pulse rate, muscle tremors and distinctive opticokinetic symptoms. Although the subject's temperature was elevated, he reported that he did not feel warm. He completed the SFSTs as instructed, although it seemed to take greater effort than the same tasks pre-dose. He also stated that K2 was addicting and had mind altering and "bizarre" effects. The DREs' conclusions: the effects of JWH-18 and JWH-073 are similar to those of THC and the dissociative anaesthetics. They noted that the subject is a regular user of K2 and may have developed some tolerance; SFST performance might be poorer in a first-time user.

Blood and urine samples were taken before smoking and 30 minutes after the end of smoking, and sent to the MSP Toxicology Unit for analysis. The samples were analyzed using the laboratory's customary immunoassay screening and GC/MS confirmation procedures. No synthetic cannabinoids were seen in the pre-dose specimens. However, JWH-018 and JWH-073 were seen in both blood and urine post-dose. Both peaks were present at a higher intensity in blood than in urine, which may have been a result of the urine collection so soon after the cessation of smoking.

Conclusions: the active ingredients of two varieties of K2 sold in East Lansing and Auburn Hills are JWH-018 and JWH-073. These compounds are not detectable by our lab's immunoassay screen, but can be identified by GC/MS. Blood levels of both 30 minutes after one cigarette appear to be in the low ng/ml range. Physiological effects are similar to those of cannabis and the dissociative anasthetics.

Epilogue: A bill currently under consideration by the Michigan Legislature would make synthetic cannabinoids, including JWH-018 and JWH-073, Schedule I controlled substances. The medical marihuana business, however, is prospering. It remains to be seen how the relative popularity of these two substances changes with alterations in their legal status.

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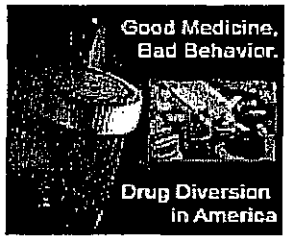

Information and Legal Resources at your

Drugs and Chemicals of Concern

Spice Cannabinoid

- **CP 47,497 and homologues**
  2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol)
- **HU-210**
  [(6a*R*,10a*R*)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c] chromen-1-ol)]
- **HU-211**
  (dexanabinol, (6a*S*,10a*S*)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl) -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)
- **JWH-018**
  1-Pentyl-3-(1-naphthoyl)indole
- **JWH-073**
  1-Butyl-3-(1-naphthoyl)indole

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-345N]

Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I

AGENCY: Drug Enforcement Administration (DEA), U.S. Department of Justice.

ACTION: Notice of Intent.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place five synthetic cannabinoids into the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions under **21 U.S.C. 811**(h) of the CSA. The substances are 1-pentyl-3-(1-naphthoyl)indole (JWH-018), 1-butyl-3-(1-naphthoyl)indole (JWH-073), 1-[2-(4- morpholinyl) ethyl]-3-(1-naphthoyl)indole (JWH-200), 5-(1,1- dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP -47,497 C8 homologue). This intended action is based on a finding by the DEA Deputy

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Administrator that the placement of these synthetic cannabinoids into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose criminal sanctions and regulatory controls of Schedule I substances under the CSA on the manufacture, distribution, possession, importation, and exportation of these synthetic cannabinoids.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, telephone (202) 307-7183, fax (202) 353-1263, or e-mail **ode@dea.usdoj.gov**.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473), which was signed into law on October 12, 1984, amended section 201 of the CSA (**21 U.S.C. 811**) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. The Attorney General may extend the temporary scheduling up to six months. A substance may be temporarily scheduled under the emergency provisions of the CSA if it is not listed in any other schedule under section 202 of the CSA (**21 U.S.C. 812**) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA (28 CFR 0.100). The Administrator has redelegated this function to the Deputy Administrator, pursuant to 28 CFR, appendix to subpart R, section 12.

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the Deputy Administrator to notify the Assistant Secretary for Health, delegate of the Secretary of Health and Human Services, of her intention to temporarily place a substance into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification, including whether there is an exemption or approval in effect for the substance in question under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published.

In making a finding that placing a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Deputy Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: (4) History

and current pattern of abuse; (5) The scope, duration and significance of abuse; and (6) What, if any, risk there is to the public health.

Synthetic Cannabinoids

Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system. No legitimate non-research uses have been identified for these synthetic cannabinoids. They have not been approved by the U.S. Food and Drug Administration for human consumption. These THC-like synthetic cannabinoids, 1-pentyl-3-(1-naphthoyl)indole (JWH-018), 1-butyl-3-(1- naphthoyl)indole (JWH-073), 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl)indole (JWH-200), 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3- hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue), are so termed for their THC-like pharmacological properties. Though they have similar properties to delta-9-tetrahydrocannabinol (THC) found in marijuana and have been found to be more potent than THC in animal studies. Numerous herbal products have been analyzed and JWH-073, JWH-018, JWH-200, CP-47,497, and cannabicyclohexanol have been identified in varying mixture profiles and amounts spiked on plant material.

Factor 4. History and Current Pattern of Abuse

The emergence of these synthetic cannabinoids represents a recent phenomenon in the designer drug market. Since the initial identification of JWH-018 in December 2008, many additional synthetic cannabinoids with purported psychotropic effects have been identified in related products. The popularity of these THC-like synthetic cannabinoids has greatly increased in the United States and they are being abused for their psychoactive properties. Primarily found laced on plant material, these synthetic cannabinoids are also being abused alone as self-reported on Internet discussion boards. This abuse has been characterized by both acute and long term public health and safety problems. Even though there is no accepted use for these synthetic cannabinoids, multiple shipments of JWH-018 and JWH-073 have been intercepted by U.S. Customs and Border Protection in 2010, with one being in excess of 50 kilograms. Additionally, bulk loads of JWH-018 and JWH-200 have been seized by law enforcement in 2010. In Casper, Wyoming, products seized in a raid, which were laced with synthetic cannabinoids, were found in conjunction with illicit drugs.

The products containing these THC-like synthetic cannabinoids are marketed as "legal" alternatives to marijuana and are being sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores. These synthetic cannabinoids alone or spiked on plant material have the potential to be extremely harmful due to their method of manufacture and high pharmacological potency. DEA has been made aware that smoking these synthetic cannabinoids for the purpose of achieving intoxication and experiencing the psychoactive effects is identified as a reason for emergency room visits and calls to poison control centers.

As of October 15, 2010, 15 states in the United States, European and Scandinavian countries have controlled one or more of the synthetic cannabinoids DEA is temporarily scheduling here.

Factor 5. Scope, Duration and Significance of Abuse

According to forensic laboratory reports, the first appearance of these synthetic cannabinoids in the United States occurred in November 2008, when U.S. Customs and Border Protection analyzed "Spice" products. From January 2010 through September 2010, the National Forensic Laboratory Information System, a national repository of drug evidence analyses from forensic laboratories across the United States, reported over 500 exhibits relating to these synthetic cannabinoids from various States including Alabama, Arkansas, California, Florida, Hawaii, Iowa, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Missouri, North Dakota, Nebraska, Nevada, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Virginia. Additionally, the American Association of Poison Control Centers (AAPCC) has reported receiving over 1,500 calls as of September 27, 2010, relating to products spiked with these synthetic cannabinoids from 48 states and the District of Columbia.

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Factor 6. What, if Any, Risk There Is to the Public Health

JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol share pharmacological similarities with the Schedule I substance THC. Health warnings have been issued by numerous state public health departments and poison control centers describing the adverse health effects associated with these synthetic cannabinoids and their related products including agitation, anxiety, vomiting, tachycardia, elevated blood pressure, seizures, hallucinations and non-responsiveness. Case reports describe psychotic episodes, withdrawal, and dependence associated with use of these synthetic cannabinoids, similar to syndromes observed in cannabis abuse. Emergency room physicians have reported admissions connected to the abuse of these synthetic cannabinoids. Additionally, when responding to incidents involving individuals who have reportedly smoked these synthetic cannabinoids, first responders report

that these individuals suffer from intense hallucinations. Detailed chemical analysis by DEA and other investigators have found these synthetic cannabinoids spiked on plant material in products marketed to the general public. The risk of adverse health effects is further increased by the fact that similar products vary in the composition and concentration of synthetic cannabinoids(s) spiked on the plant material.

Self-reported abuse of these THC-like synthetic cannabinoids alone and spiked on plant material appear on Internet discussion boards. According to self-reports, these substances are cannabis-like (or THC- like) in their psychoactive effects and are more potent than THC in this regard. The most common route of administration of these synthetic cannabinoids is by smoking, using a pipe, water pipe, or rolling the drug-spiked plant material in cigarette papers.

The marketing of products that contain one or more of these synthetic cannabinoids is geared towards teens and young adults. Despite disclaimers that the products are not intended for human consumption, retailers promote that routine urinalysis tests will not typically detect the presence of these synthetic cannabinoids.

Furthermore, a number of the products and synthetic cannabinoids appear to originate from foreign sources and are manufactured in the absence of quality controls and devoid of regulatory oversight. These products and associated synthetic cannabinoids are readily accessible via the Internet.

DEA has considered the three criteria for placing a substance into Schedule I of the CSA (**21 U.S.C. 812**). The data available and reviewed for JWH-073, JWH-018, JWH-200, CP-47,497, and cannabicyclohexanol indicate that these synthetic cannabinoids each have a high potential for abuse, no currently accepted medical use in treatment in the United States and are not safe for use under medical supervision.

Based on the above data, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol pose an imminent hazard to the public safety. DEA is not aware of any recognized therapeutic uses of these synthetic cannabinoids in the United States. As required by section 201(h)(4) of the CSA (**21 U.S.C. 811**(h)), the Deputy Administrator in a letter dated October 6, 2010, notified the Assistant Secretary of Health of the intention to temporarily place five synthetic cannabinoids in Schedule I.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Deputy Administrator has considered the available data and the three factors required to support a determination to temporarily schedule five synthetic cannabinoids: 1- butyl-3-(1-naphthoyl)indole, 1-pentyl-3-(1-naphthoyl)indole, 1-[2-(4- morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2- [(1R,3S)-3-hydroxycyclohexyl]-phenol, and 5-(1,1-dimethyloctyl)-2- [(1R,3S)-3-hydroxycyclohexyl]-phenol in Schedule I of the CSA and finds that placement of these synthetic cannabinoids into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Because the Deputy Administrator finds that it is necessary to temporarily place these synthetic cannabinoids into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication of the order in the **Federal Register**. JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol will be subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, possession, importing and exporting of a Schedule I controlled substance under the CSA. Further, it is the intention of the Deputy Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this notice and the date that notification was transmitted to the Assistant Secretary for Health.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action provides a notice of intent to temporarily place 1-butyl-3-(1-naphthoyl)indole, 1-pentyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3- hydroxycyclohexyl]-phenol into Schedule I of the CSA. DEA is not aware of any legitimate non-research uses for these synthetic cannabinoids in the United States.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $126,400,000 or more (adjusting for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on

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competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign- based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(h) of the CSA (**21 U.S.C. 811**(h)), and delegated to the Deputy Administrator of the DEA by Department of Justice regulations (28 CFR 0.100, and section 12 of the Appendix to Subpart R), the Deputy Administrator hereby intends to order that 21 CFR part 1308 be amended as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11 is amended by adding new paragraphs (g)(1), (2), (3), (4), and (5) to read as follows:

Sec. 1308.11 Schedule I.

* * * * *

(g) * * *

4 ~~(1)~~ 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol- 7297
(Other names: CP-47,497)

5 ~~(2)~~ 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol- 7298
(Other names: cannabicyclohexanol and CP-47,497 C8 homologue)

6 ~~(3)~~ 1-Butyl-3-(1-naphthoyl)indole-7173
(Other names: JWH-073)

7 ~~(4)~~ 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole-7200
(Other names: JWH-200)

8 ~~(5)~~ 1-Pentyl-3-(1-naphthoyl)indole-7118
(Other names: JWH-018 and AM678)

Dated: November 15, 2010.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. 2010-29600 Filed 11-23-10; 8:45 am]

BILLING CODE 4410-09-P

JWH-081

From Wikipedia, the free encyclopedia

[redacted]-081 is an analgesic chemical from the naphthoylindole family, which acts as a cannabinoid agonist at both the CB_1 and CB_2 receptors.[1] It is fairly selective for the CB_1 subtype, with affinity at this subtype approximately 10x the affinity at CB_2.[2] It was discovered and named after Dr. John W. Huffman.

See also

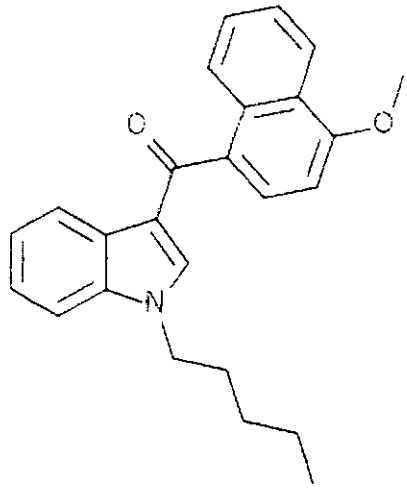
- JWH-018
- JWH-098
- JWH-164
- JWH-210

References

1. ^ Aung MM, Griffin G, Huffman JW, Wu MJ, Keel C, Yang B, Showalter VM, Abood ME, Martin BR. Influence of the N-1 alkyl chain length of cannabimimetic indoles upon CB_1 and CB_2 receptor binding. *Drug and Alcohol Dependence* 2000; 60:133-140.
[redacted] ^ Huffman JW, Zengin G, Wu MJ, Lu J, Hynd G, Bushell K, Thompson ALS, Bushell S, Tartal C, Hurst DP, Reggio PH, Selley DE, Cassidy MP, Wiley JL, Martin BR. Structure–activity relationships for 1-alkyl-3-(1-naphthoyl)indoles at the cannabinoid CB_1 and CB_2 receptors: steric and electronic effects of naphthoyl substituents. New highly selective CB_2 receptor agonists. *Bioorganic and Medicinal Chemistry*. 2005; 13:89-112.

Categories: Cannabinoids | Naphthoylindoles | Phenol ethers | Cannabinoid stubs

JWH-081



Systematic (IUPAC) name

4-methoxynaphthalen- 1-yl- (1-pentylindol- 3-yl)methanone

Identifiers	
CAS number	210179-46-7
ATC code	?
PubChem	CID 10547208
Chemical data	
Formula	$C_{25}H_{25}NO_2$
Mol. mass	371.47 g/mol
SMILES	eMolecules & PubChem
Therapeutic considerations	
Pregnancy cat.	?
Legal status	Legal

[redacted]

Drugs and Chemicals of Concern

4-methylmethcathinone
[Mephedrone, 4-MMC, meow meow, m-CAT, bounce, bubbles, mad cow]

July 2010
DEA/OD/ODE

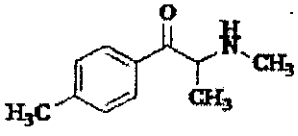
Introduction

4-Methylmethcathinone (mephedrone) is a designer drug of the phenethylamine class and shares substantial structural similarities with methcathinone (Schedule I). Evidence of mephedrone use and associated toxicity has been increasing, in 2009 and 2010, particularly in the United Kingdom and other European countries. To date, one confirmed and several suspected deaths related to mephedrone have been reported by Europol-EMCDDA Joint report on mephedrone 2010. In recent years, law enforcement agencies have documented seizures (Oregon, Illinois and Alabama) associated with mephedrone in the United States.

Licit Uses

Mephedrone is not approved for medical use in the United States.

Chemistry



4-Methylmethcathinone
Molecular Formula: C11H15NO

The core chemical structure of mephedrone identifies it as a phenethylamine, and is related in chemical structure to methcathinone differing only by a methyl group (CH3) on the ring. It is a solid at room temperature.

Pharmacology

Structure-activity relationship studies allow to predict that the pharmacology of mephedrone is similar to methcathinone as well as other substances of phenethylamine chemical class. The compounds having similar structure (e.g., methamphetamine, methylone, 3,4-methylenedioxymethamphetamine, cathinone and methcathinone) have been used to assess the pharmacological profile of mephedrone. This class of compounds is known to produce central nervous system stimulation, psychoactivity and hallucinations.

The adverse health effects caused by mephedrone are broadly similar to those seen with other stimulant drugs. Adverse effects produced by phenethylamines are increased heart rate, chest pain, agitation, irritability, dizziness, delusions, nose bleeding, nausea and vomiting. Consistent with the above discussion, mephedrone was reported to produce agitation, dilated pupils, increased heart rate and blood pressure in a 22-year-old man who used it for recreational purpose.

User Population

It is predominantly used by youth population (15-24 years), higher in males than females, from urban areas, who frequent clubs, discos and dance events (Europol-EMCDDA Joint report on Mephedrone, 2010).

Illicit Distribution

Mephedrone is sold over the internet and is promoted as a "research chemical", "bath salts" or "plant food."

Control Status

Mephedrone is not scheduled under Controlled Substance Act (CSA). However, it can be considered an analogue of methcathinone (schedule I substance) under the analogue provision of the CSA (Title 21 United States Code 813). Therefore, law enforcement cases involving mephedrone can be prosecuted under the Federal Analog Act of the CSA.

OFFICE OF ATTORNEY GENERAL
Crime Laboratory Division
2641 East Main Avenue
Bismarck, ND 58501-5044

Tel. (701) 328-6159
(800) 296-2054
Fax (701) 328-6185

LABORATORY REPORT

Case Number: 10-00787

Report Date: 02/25/2010
Report To: Bismarck Police Department
Dean Clarkson

Submitting Agency: Bismarck Police Department
Agency Case Number: 10-2895

Evidence Submitted:

1 One sealed plastic bag containing one "Star Dust" package containing one small ziplock bag containing off-white powder. (1)

Summary of Analysis:

Item	Submitted	Substance Found
1	1.07 grams	Tentatively Identified as 3,4-Methylenedioxypyrovalerone (MDPV), Lidocaine, and Mannitol

Note: The identification of the 3,4-Methylenedioxypyrovalerone (MDPV) is tentative due to the lack of an authenticated reference standard.

Sincerely,

Crime Laboratory Division

Chris Focke
Forensic Scientist

Rules 2009

FR Doc E9-11933[Federal Register: May 21, 2009 (Volume 74, Number 97)] [Rules and Regulations] [Page 23790-23793] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr21my09-2]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-319F]

Schedules of Controlled Substances: Placement of Tapentadol Into Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance tapentadol, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, into schedule II of the

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Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of schedule II will be applicable to the manufacture, distribution, dispensing, importation, and exportation of tapentadol and products containing tapentadol.

DATES: Effective Date: June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2008, the Food and Drug Administration (FDA) approved tapentadol for marketing in the United States as a prescription drug product for the treatment of moderate-to-severe acute pain. Tapentadol is a new molecular entity with centrally-acting analgesic properties.

Tapentadol has dual modes of action, namely mu ([mu]) opioid receptor agonistic action and inhibition of reuptake of norepinephrine at the norepinephrine transporter. The chemical name of its monohydrochloride salt form is 3-[(1R,2R)-3-(dimethylamino)-1-ethyl-2- methylpropyl]phenol hydrochloride. Tapentadol shares substantial pharmacological effects and abuse potential with other schedule II opioid analgesics, e.g., morphine, oxycodone, and hydromorphone. Since tapentadol is a new molecular entity, there has been no evidence of diversion, abuse, or law enforcement encounters involving the drug.

On November 13, 2008, the Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that tapentadol be placed into schedule II of the CSA. Enclosed with the November 13, 2008, letter was a document prepared by the Food and Drug Administration (FDA) entitled, "Basis for the Recommendation for Control of Tapentadol in Schedule II of the Controlled Substances Act." The document contained a review of the factors which the CSA requires the Secretary to consider (**21 U.S.C. 811**(b)).

After a review of the available data, including the scientific and medical evaluation and the scheduling recommendation from DHHS, the Deputy Administrator of the DEA published a Notice of Proposed Rulemaking entitled "Schedules of Controlled Substances: Placement of Tapentadol into Schedule II" on February 17, 2009 (74 FR 7386), which proposed placement of tapentadol into schedule II of the CSA. The proposed rule provided an opportunity for all interested persons to submit their written comments on or before March 19, 2009.

Comments Received

The DEA received three comments in response to the Notice of Proposed Rulemaking. One comment was from a consulting firm, one comment was from a concerned citizen, and the last comment was from a company which does research and development on pharmaceutical drugs.

The first commenter recommended that the DEA expedite the issuance and effective date of the Final Rule placing tapentadol in schedule II. The commenter stated that tapentadol will provide a safe and effective substitute for other schedule II analgesics and that the conditions of public health necessitate and justify this request. In response, DEA believes that providing 30 days for this rule to become effective is both expeditious and sufficient to allow handlers to apply for registration with DEA and to comply with the regulatory requirements for handling schedule II controlled substances.

A second commenter stated that since tapentadol induces effects similar to oxycodone and morphine, both schedule II substances, then it should be placed in schedule II of the Controlled Substances Act based on tapentadol's abuse potential. Thus, the commenter agreed with DHHS' recommendation and the action proposed by DEA. No response from DEA is necessary to this comment because it is consistent with the DEA's final action.

The third commenter had four questions/comments regarding the implementation of this Final Rule. Each question/comment is addressed below.

The commenter requested that DEA registrants be allowed enough time to make the changes needed to carry out handling tapentadol as a schedule II substance, as dictated in **21 CFR 1301.51, 1301.71**, and **1304.04**. In response to this comment, the effective date of the Final Rule placing tapentadol in schedule II of the Controlled Substances Act will be thirty (30) days from the date of publication of the Final Rule, thus allowing ample time for those that wish to handle tapentadol to meet DEA regulatory requirements for handling schedule II substances. It has been DEA's experience that this is sufficient time to meet the regulatory requirements provided below.

The commenter asked if quantities of tapentadol held by a DEA registrant would have to be reported once the scheduling of tapentadol as a schedule II substance was finalized. In response, the reporting and recordkeeping requirements for handling schedule II substances can be found in 21 CFR part 1304. Specifically, **21 CFR 1304.11**(b) states that "Every person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing of controlled substances * * *" In order for a manufacturer to handle a schedule II substance, a manufacturing or procurement quota has to be requested in accordance with the requirements of **21 U.S.C. 826**(c) and **21 CFR part 1303.** The manufacturer's inventory of the substance is used, in part, to determine the manufacturer's quota.

The commenter asked about the process for adding the CSA drug code for tapentadol to their registration. In response, the regulatory process required to obtain a DEA registration is outlined generally in **21 CFR 1301.11 through 1301.19**, and the process required to modify an existing DEA registration is outlined in 21 CFR 1301.51. Information relating to registration may be found on the Internet, http://www.DEAdiversion.usdoj.gov, or by contacting DEA's Registration Call Center, toll free at 1-800-882-9539.

Finally, the commenter inquired about the process for establishing an NDC number for tapentadol with the Automation of Reports and Consolidated Orders System (ARCOS). National Drug Code (NDC) numbers are assigned by the Food and Drug Administration (FDA) in conjunction with registration and drug listing requirements of the Federal Food, Drug, and Cosmetic Act. Accordingly, a person manufacturing a product containing tapentadol must obtain an NDC number from FDA in accordance with 21 CFR 207.35. Once the drug code for tapentadol is added to an existing manufacturer's registration or a new registration is issued to an applicant, then that DEA-registered manufacturer must provide the DEA's ARCOS Unit with its established NDC number for their product containing tapentadol. Once that information is obtained, it can be used to report ARCOS reportable transactions pursuant to **21 CFR 1304.33**.

Scheduling of Tapentadol

Based on the recommendation of the Assistant Secretary for Health, received

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in accordance with Sec. 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, and after a review of the comments received in response to the Notice of Proposed Rulemaking, the Deputy Administrator of DEA, pursuant to Sec. Sec. 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Tapentadol has a high potential for abuse;

(2) Tapentadol has a currently accepted medical use in treatment in the United States; and

(3) Abuse of tapentadol may lead to severe psychological or physical dependence.

Based on these findings, the Deputy Administrator of DEA concludes that tapentadol, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, warrants control in schedule II of the CSA (**21 U.S.C. 812**(b)(2)).

Requirements for Handling Tapentadol

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with tapentadol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with tapentadol, must be registered to conduct such activities in accordance with part 1301 of Title 21 of the Code of Federal Regulations. Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before June 22, 2009 and may continue their activities until DEA has approved or denied that application.

Security. Tapentadol is subject to schedule II security requirements and must be manufactured, distributed, and stored in accordance with **Sec. Sec. 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76 and 1301.77 of Title 21** of the Code of Federal Regulations on or after June 22, 2009.

Labeling and Packaging. All labels and labeling for commercial containers of tapentadol must comply with requirements of **Sec. Sec. 1302.03 through 1302.07 of Title 21** of the Code of Federal Regulations on or after June 22, 2009.

Quotas. Quotas for tapentadol must be established pursuant to part **1303 of Title 21** of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of tapentadol must keep an inventory of all stocks of tapentadol on hand pursuant to Sec. Sec. 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations on or after June 22, 2009. Every registrant who desires registration in schedule II for tapentadol must conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to **Sec. Sec. 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23** of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Reports. All registrants required to submit reports to the Automation of Reports and Consolidated Order System (ARCOS) in accordance with **Sec. 1304.33** of Title 21 of the Code of Federal Regulations must do so for tapentadol.

Orders for Tapentadol. All registrants involved in the distribution of tapentadol must comply with the order form requirements of **part 1305 of Title 21** of the Code of Federal Regulations on or after June 22, 2009.

Prescriptions. All prescriptions for tapentadol or prescriptions for products containing tapentadol must be issued pursuant to **Sec. Sec. 1306.03 through 1306.06 and 1306.11 through 1306.15** of Title 21 of the Code of Federal Regulations on and after June 22, 2009.

Importation and Exportation. All importation and exportation of tapentadol must be in compliance with part 1312 of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Criminal Liability. Any activity with tapentadol not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful on or after June 22, 2009.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)); this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Tapentadol products will be prescription drugs used for the treatment

of moderate-to-severe acute pain. Handlers of tapentadol also handle other controlled substances used to treat pain which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

- Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to Title 28, Part 0, Appendix to Subpart R, Section 12, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

[[Page 23793]]

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: **21 U.S.C. 811, 812, 871**(b), unless otherwise noted.

2. Section 1308.12 is amended in the table by adding a new paragraph (c)(28) to read as follows:

Sec. 1308.12 Schedule II.

* * * * *

(c) * * *

(28) Tapentadol..... 9780

* * * * *

Dated: May 15, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-11933 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-09-P

R Doc E9-27583[Federal Register: November 17, 2009 (Volume 74, Number 220)] [Proposed Rules] [Page 59108-59112] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr17no09-16]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-333P]

Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance carisoprodol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized, this action would impose the regulatory controls and criminal sanctions of schedule IV on those who handle carisoprodol and products containing carisoprodol.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before December 17, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Standard Time (EST) on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-333" on all written and electronic correspondence. Written comments sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to dea.diversion.policy@usdoj.gov. Comments may also be sent electronically through http://www.regulations.gov using the electronic comment form provided on that site. An electronic copy of this

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document is also available at the http://www.regulations.gov website. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight EST on the day the comment period closes because http://www.regulations.gov terminates the public's ability to submit comments at midnight EST on the day the comment period closes. Commenters in time zones other than EST may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Comments and Requests for Hearing: In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of **21 CFR 1308.44** and **1316.47**. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the

regulations as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)," may request a hearing. **21 CFR 1308.42**. Please note that DEA may grant a hearing only "for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment, or repeal of a rule issuable" pursuant to 21 U.S.C. 811(a). All correspondence regarding this matter should be submitted to the DEA using the address information provided above.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at http://www.regulations.gov and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the FOR FURTHER INFORMATION CONTACT paragraph.

Background

Carisoprodol is a centrally acting muscle relaxant and is indicated for the relief of discomfort associated with acute, painful musculoskeletal conditions. Carisoprodol has been available since 1959 as a prescription drug in the United States under the trade name Soma[supreg]. It is also marketed as generic products. Carisoprodol is similar to a variety of central nervous system (CNS) depressants, including meprobamate (C-IV) and chlordiazepoxide (C-IV). The actual abuse data from several databases demonstrate that carisoprodol is abused in the United States. Because of growing concerns about abuse of carisoprodol, a number of states have regulated carisoprodol under their controlled substance regulations, and a number of additional states are currently considering such regulation.

Because of the evidence relating to diversion, abuse, and trafficking of carisoprodol, in March 1996, the DEA requested from the DHHS a scientific and medical evaluation and a scheduling recommendation for carisoprodol, in accordance with **21 U.S.C. 811**(b).

In February 1997, the U.S. Food and Drug Administration (FDA) Drug Abuse Advisory Committee (DAAC) deliberated upon the abuse and scheduling issues and concluded that the data were insufficient to control carisoprodol under the CSA at that time. Since the FDA DAAC meeting, pharmacological studies addressing the abuse liability of carisoprodol have been conducted under the direction of the National Institute on Drug Abuse (NIDA) and the College on Problems of Drug Dependence (CPDD). DEA acquired new carisoprodol-related data on actual abuse, law enforcement encounters and other information and sent this supplementary information to DHHS on November 14, 2005. FDA acquired new data from the Drug Abuse Warning Network (DAWN), National Survey on Drug Use and Health (NSDUH), Florida Medical Examiners Commission reports, FDA's Adverse Event Reporting System (AERS) and information from the published scientific literature and conducted a scientific and medical evaluation. These data collectively indicate that carisoprodol has abuse potential and is being diverted, trafficked, with increasing frequency and magnitude.

Carisoprodol abuse has been associated with increasing numbers of emergency department (ED) visits in recent years as indicated by DAWN. The "abuse frequency," calculated as ED visits per 10,000 prescriptions, of carisoprodol (frequency range during 2002-2007: 15.1 to 22.6 visits/10,000 prescriptions) is similar to that of a schedule IV drug, diazepam (frequency range during 2002-2007: 12.5 to 14.1 visits/10,000 prescriptions). Carisoprodol is used as either the sole drug or in combination with other substances such as opioids, benzodiazepine, alcohol, marijuana, and cocaine. Data from the AERS database show that carisoprodol is associated with adverse health events including dependence and withdrawal syndrome.

The data from National Poison Data System of the American Association of Poison Control Centers documented 8,821 carisoprodol toxic exposure cases including 3,605 cases in which it was

the sole drug mentioned in 2007. Medical Examiners Commission Reports released by the Florida Department of Law Enforcement (FDLE) indicate that carisoprodol/meprobamate related deaths in Florida increased by 100 percent from 208 deaths in 2003 to 415 deaths in 2008.

The National Forensic Laboratory Information System (NFLIS), a DEA system that tracks analyzed drug exhibits submitted by the federal, state, and local law enforcement, documented evidence of substantial diversion of carisoprodol. For example, law enforcement submitted a total of 3,873 carisoprodol drug items to participating forensic laboratories in 2008. NFLIS consistently listed carisoprodol in the top 25 most frequently identified drugs since 2000. The 2007 NSDUH data show that 2.7 million individuals used Soma[supreg] in their lifetime (i.e., ever used) for a non-medical purpose.

The data from in vitro electrophysiological studies using the whole-cell patch clamp technique demonstrate that carisoprodol elicits barbiturate-like effects. Intravenous drug self-administration studies in rhesus monkeys show that carisoprodol has positive reinforcing effects. Meprobamate, pentobarbital, and chlordiazepoxide substitute fully for the discriminative stimulus effects of carisoprodol in rats. Bemegride, a barbiturate antagonist, antagonizes the discriminative stimulus effects of carisoprodol.

Data from an animal study indicates that carisoprodol has dependence liability similar to barbital (schedule IV), a central nervous system depressant. Carisoprodol administered orally fully prevented the appearance of abstinence phenomena in dogs tolerant and dependent on barbital. Several published reports document evidence of tolerance and dependence to carisoprodol and indicate the occurrence of abstinence symptoms during carisoprodol withdrawal in humans.

On October 6, 2009, the Acting Assistant Secretary for Health, DHHS, sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that carisoprodol be placed into schedule IV of the CSA. Enclosed with the October 6, 2009, letter was a document prepared by the FDA entitled, "Basis for the Recommendation for Control of Carisoprodol in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)). The factors considered by the Assistant Secretary of Health and DEA **21 U.S.C. 811**(c)) with respect to carisoprodol were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (**21 U.S.C. 811**(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

1. Carisoprodol has a low potential for abuse relative to the drugs or other substances in Schedule III. Animal studies indicate that carisoprodol is similar to schedule IV drugs such as meprobamate and chlordiazepoxide in its central nervous system depressant effects. The documented data on law enforcement encounters and actual abuse of carisoprodol demonstrate that it has a potential for abuse and is being diverted and abused. Since 2000, DEA's NFLIS database consistently mentioned carisoprodol in the top 25 drugs that were most frequently identified by state and local forensic laboratories thereby indicating that carisoprodol is being diverted. Emergency department visits data from DAWN indicate that abuse frequency of carisoprodol is similar to that of diazepam, a schedule IV drug. Recent data from DAWN medical examiner reports and emergency department visits showed an increase in carisoprodol abuse.

2. Carisoprodol has a currently accepted medical use in treatment in the United States. Carisoprodol is an FDA approved drug and is used for the relief of discomfort associated with acute, painful musculoskeletal conditions.

3. Abuse of carisoprodol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. Carisoprodol, similar to barbital (schedule IV), prevents the abstinence syndrome in drug withdrawn barbital-dependent dogs. Published reports indicate that carisoprodol causes psychological or physical dependence and withdrawal syndrome.

Based on these findings, the Deputy Administrator of DEA concludes that carisoprodol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible warrants control in schedule IV of the CSA. (**21 U.S.C. 812**(b)(4))

References to the above studies and data may be found in the Health and Human Services scheduling recommendation and DEA's independent analysis, both of which are available on the electronic docket associated with this rulemaking.

Requirements for Handling Carisoprodol

If this rule is finalized as proposed, carisoprodol would be subject to CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a schedule IV controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with carisoprodol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with carisoprodol, would need to be registered to conduct such activities in accordance with 21 CFR part 1301.

Security. Carisoprodol would be subject to schedules III-V security requirements and would need to be manufactured, distributed, and stored in accordance with **21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77.**

Labeling and Packaging. All labels and labeling for commercial containers of carisoprodol which are distributed on or after finalization of this rule would need to comply with requirements of **21 CFR 1302.03-1302.07.**

Inventory. Every registrant required to keep records and who possesses any quantity of carisoprodol would be required to keep an inventory of all stocks of carisoprodol on hand pursuant to **21 CFR 1304.03, 1304.04 and 1304.11.** Every registrant who desires registration in schedule IV for carisoprodol would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to 21

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CFR **1304.03, 1304.04, 1304.21, 1304.22, and 1304.23.**

Prescriptions. All prescriptions for carisoprodol or prescriptions for products containing carisoprodol would be required to be issued pursuant to **21 CFR 1306.03-1306.06 and 1306.21, 1306.22-1306.27.**

Importation and Exportation. All importation and exportation of carisoprodol would need to be in compliance with **21 CFR part 1312.**

Criminal Liability. Any activity with carisoprodol not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (**21 U.S.C. 811**(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

In considering the impact on small entities, the first question is whether a substantial number of small entities are affected. In this instance, the entities affected are those now selling carisoprodol- containing products without registration. DEA has identified 22 firms manufacturing carisoprodol-containing products

in 2009.\1\ Fifteen of these firms have existing DEA registrations. This leaves seven firms from this data set selling carisoprodol without registration. DEA has no information on the number of non-registrants distributing or importing carisoprodol, but there is every reason to believe that the number of such firms is well in excess of the seven already identified. The Small Business Administration size standard for a small wholesaler of drugs is 100 employees. It is clearly possible to operate a drug distributing firm with fewer than 100 employees. There can be no question that a substantial number of small entities will be affected by this rule.

\1\ IMS Health National Prescription Audit (NPA).

The impact on non-registrants now selling carisoprodol will occur in two forms: the cost of registration and the cost of meeting the security requirements in **21 CFR part 1301**. There is also a potential impact on firms not now selling carisoprodol who might have wished to enter the market.

The annual registration fee for a distributor, importer, or exporter is $1,147. There is some uncertainty in estimating the cost of meeting the security requirements, because most nonregistrants already meet the security requirements, at least in part, for schedule III and IV substances. To be conservative, it is assumed that every nonregistrant will have to buy a safe to store carisoprodol. A safe with capacity of 13.5 cubic feet should be adequate. A safe of this size may be purchased for $1,350.\2\ Annualized over 15 years at 7.0 percent, that is $148 per year. Total annual cost of compliance with the rule, then, is $1,295. The usual standard for a significant economic impact is 1.0 percent of revenue. For $1,295 per year to be a significant economic impact, annual revenue of a firm would have to be under $130,000. Any firm in the business of distributing drugs needs annual revenue well in excess of that amount to sustain itself.

\2\ NationwideSafes.com http://www.nationwidesafes.com/capacity- more-than-4pt0-cu-ft.html.

It should be acknowledged that, for a small firm, there may be some inconvenience and expense in preparing necessary forms for registration and registration renewal. These are minor costs. There are also recordkeeping requirements, but these impose little or no incremental cost for a firm that is already maintaining records needed for a wholesale business. The costs of registration and security requirements will not be a significant economic impact.

If a firm chose not to register and to drop its carisoprodol line, the cost to the firm would exceed its earnings on the carisoprodol sales. The firm might also lose some customers who do not want to buy from a vendor without carisoprodol in its product line. A competent manager will recognize this cost. In light of the very small cost of registering, he would presumably choose to drop carisoprodol from the firm's products only if the firm were earning a negligible profit from that line and he judged that dropping it would not turn away significant customers. In light of the foregoing analysis, DEA finds that this rule will not have a significant economic impact on a substantial number of small entities. DEA has no information regarding the number of persons who may distribute carisoprodol-containing products, but do not manufacture, package, repackage, or relabel those products. Therefore, DEA seeks comment on any entities that might be affected by this control action.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator

[[Page 59112]]

hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for **21 CFR part 1308** continues to read as follows:

Authority: **21 U.S.C. 811, 812, 871**(b) unless otherwise noted.

2. **Section 1308.14** is amended by redesignating paragraphs (c)(5) through (c)(52) as paragraphs (c)(6) through (c)(53) and adding a new paragraph (c)(5) to read as follows:

Sec. 1308.14 Schedule IV.

* * * * *

(c) * * *

(5) Carisoprodol..... 8192

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Dated: November 10, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-27583 Filed 11-16-09; 8:45 am]

R Doc E9-23971[Federal Register: October 6, 2009 (Volume 74, Number 192)] [Rules and Regulations] [Page 51234-51236] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr06oc09-3]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-327F]

Schedules of Controlled Substances; Placement of Fospropofol Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of schedule IV will be applicable to the manufacture, distribution, dispensing, importation, and exportation of fospropofol and products containing fospropofol.

DATES: Effective Date: November 5, 2009.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 2008, the Food and Drug Administration (FDA) approved fospropofol for marketing under the trade name Lusedra[reg] in the United States as a drug product indicated for monitored anesthesia care (MAC) sedation in adult patients undergoing diagnostic or therapeutic procedures.

Fospropofol, 2,6-diisopropopylphenoxymethyl phosphate disodium, is a water soluble, phosphono-O-methyl prodrug of propofol. It is metabolized in the body to propofol, the active metabolite. Propofol has been available for medical use in the United States since 1989 and is not currently a controlled substance. The pharmacological effects of fospropofol are attributed to the pharmacological actions of propofol. Propofol binds to [gamma]-aminobutyric acid (GABAA) receptor and acts as a modulator by potentiating the activity of GABA at this receptor.

Since propofol is the active metabolite of fospropofol, the abuse potential of fospropofol is comparable to that of propofol. Animal self-administration studies demonstrated that the reinforcing effects of propofol are relatively low and comparable to midazolam and other schedule IV benzodiazepines. Fospropofol elicits behavioral effects similar to methohexital and midazolam, schedule IV sedative-hypnotics.

Since fospropofol is a new molecular entity, there has been no evidence of diversion, abuse, or law enforcement encounters involving the drug.

On February 27, 2009, the Acting Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that fospropofol be placed into schedule IV of the CSA. Enclosed with the February 27, 2009, letter was a document prepared by the FDA entitled, "Basis for the Recommendation for Control of Fospropofol and Its Salts in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (**21 U.S.C. 811**(b)).

After a review of the available data, including the scientific and medical evaluation and the scheduling recommendation from DHHS, the Deputy Administrator of the DEA published a Notice of Proposed Rulemaking entitled "Schedules of Controlled Substances: Placement of Fospropofol into Schedule IV" on July 23, 2009 (74 FR 36424), which proposed placement of fospropofol into schedule IV of the CSA. The

proposed rule provided an opportunity for all interested persons to submit their written comments on or before August 24, 2009.

Comments Received

The DEA received two comments in response to the Notice of Proposed Rulemaking. One comment received from a concerned citizen did not relate to fospropofol, the substance that is being controlled. Thus DEA did not consider this comment.

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Another comment received from a professional organization of anesthesiologists is in agreement with the findings of scientific and medical evaluation that formed the basis for the present rule controlling fospropofol as a schedule IV substance and it fully supported this control action.

Scheduling of Fospropofol

Based on the recommendation of the Acting Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Fospropofol has a low potential for abuse relative to the drugs or substances in schedule III. Although there is no direct comparison to a schedule III substance, this finding is based on the demonstration of the abuse potential of propofol, the active metabolite, relative to the schedule IV substances, methohexital and midazolam;

(2) Fospropofol has a currently accepted medical use in treatment in the United States; and

(3) Abuse of fospropofol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. This finding is based on the symptoms exhibited upon withdrawal from propofol.

Based on these findings, the Deputy Administrator of DEA concludes that fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible warrants control in schedule IV of the CSA. (**21 U.S.C. 812**(b)(4))

Requirements for Handling Fospropofol

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with fospropofol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with fospropofol, must be registered to conduct such activities in accordance with part **1301 of Title 21 of the Code of Federal Regulations**. Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before November 5, 2009 and may continue their activities until DEA has approved or denied that application.

Security. Fospropofol is subject to schedules III-V security requirements and must be manufactured, distributed, and stored in accordance with **Sec. Sec. 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Labeling and Packaging. All labels and labeling for commercial containers of fospropofol must comply with requirements of **Sec. Sec. 1302.03-1302.07** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Inventory. Every registrant required to keep records and who possesses any quantity of fospropofol must keep an inventory of all stocks of fospropofol on hand pursuant to Sec. **Sec. 1304.03, 1304.04 and 1304.11** of Title 21 of the Code of Federal Regulations on or after November 5, 2009. Every registrant who desires registration in schedule IV for fospropofol must conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to **Sec. Sec. 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Prescriptions. All prescriptions for fospropofol or prescriptions for products containing fospropofol must be issued pursuant to **Sec. Sec. 1306.03-1306.06 and 1306.21, 1306.22-1306.27** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Importation and Exportation. All importation and exportation of fospropofol must be in compliance with **part 1312** of Title 21 of the Code of Federal Regulations on or after November 5, 2009.

Criminal Liability. Any activity with fospropofol not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful on or after November 5, 2009.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Fospropofol products will be used for monitored anesthesia care (MAC) sedation in adult patients undergoing diagnostic or therapeutic procedures. Handlers of fospropofol also handle other controlled substances used for sedation which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: Or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

0 Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28

[[Page 51236]]

CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

- 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

- 2. Section 1308.14 is amended in paragraph (c), by redesignating paragraphs (c)(23) through (c)(51) as paragraphs (c)(24) through (c)(52) and adding a new paragraph (c)(23) as follows:

Sec. 1308.14 Schedule IV.

* * * * *

(c) * * *

(23) Fospropofol..... 2138

* * * * *

Dated: September 28, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-23971 Filed 10-5-09; 8:45 am]

Rules - 2010

Federal Register: October 27, 2010 (Volume 75, Number 207)]
[Proposed Rules]
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From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr27oc10-24]

Part II

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-338]

Schedules of Controlled Substances: Placement of Propofol Into Schedule IV; Proposed Rule

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance propofol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized, this action would impose the regulatory controls and criminal sanctions of schedule IV on those who handle propofol and products containing propofol.

DATES: Written comments must be postmarked on or before December 27, 2010, and electronic comments must be sent on or before midnight Eastern time December 27, 2010.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-327" on all written and electronic correspondence. Written comments sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments may be sent to DEA by sending an electronic message to **dea.diversion.policy@usdoj.gov**. Comments may also be sent electronically through **http://www.regulations.gov** using the electronic comment form provided on that site. An electronic copy of this document is also available at the http://www.regulations.gov Web site. DEA will accept electronic comments containing Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here. Please note that DEA is requesting that electronic comments be submitted before midnight Eastern Time on the day the comment period closes because http://www.regulations.gov terminates the public's ability to submit comments at midnight Eastern Time on the day the comment period closes. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at http://www.regulations.gov and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

On March 18, 2008, the Drug Enforcement Administration (DEA) received a petition requesting that 21 CFR 1308.13 be amended so that propofol be controlled as a schedule III substance under the CSA. The basis of the petition was the reports of increased incidences of propofol abuse during the past decade. The petitioner stated as the main argument in support of the request that:

*"Propofol is the most common intravenous anesthetic in the United States today but over the course of the decade, documented cases of abuse have been steadily increasing over the past 10 years * * * Unfortunately, there is also a very high mortality rate (greater than 33%) associated with this abuse."*

The petitioner stated that controlling propofol as a scheduled drug would require all practitioners to strictly monitor the access and use of propofol and possibly save lives.

Propofol was approved in 1989 and is an ultra-short acting intravenous (i.v.) anesthetic under the commercial name, Diprivan[supreg]. Propofol is also marketed as a generic drug under three trade names. Two veterinary versions, Rapinovet and PropoFlo/ PropoVet were approved for marketing in 1999 and 2000, respectively. Propofol is indicated in adults for the initiation and maintenance of Monitored Anesthesia Care (MAC) sedation, combined sedation, and regional anesthesia. It is also indicated for Intensive Care Unit (ICU) sedation of intubated and mechanically ventilated patients. For children, propofol is indicated for induction and maintenance of general anesthesia. Diprivan[supreg] is an injectable emulsion (10 mg/ mL).

Propofol, or 2,6-diisopropylphenol, is slightly soluble in water and is formulated in an oil-in-water emulsion that is milky-white in appearance. Fospropofol, the water-soluble O-methyl-phosphate disodium salt prodrug of propofol, has been recently controlled as a schedule IV substance under the CSA.

Propofol binds to the gamma-aminobutyric acid (GABAA) receptors and acts as a modulator by potentiating the activity of GABA at these receptors. Other psychoactive drugs that are controlled under the CSA, e.g., barbiturates (schedule II and III) and benzodiazepines (schedule IV), potentiate the activity of GABA at the GABAA receptors.

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Animal self-administration studies demonstrate the reinforcing effects of propofol in rat, mouse, and primate models. It has been demonstrated that drugs that are self-administered by animals also have drug abuse potential in humans. Propofol has been demonstrated to have reinforcing effects comparable to methohexital, a schedule IV sedative- hypnotic. A study found that both drug-na[iuml]ve and methohexital-trained (a schedule IV barbiturate) rats self-administer propofol under a fixed ratio schedule. In baboons, low-to-high levels of self- administration were maintained by subanesthetic doses of propofol after substituting for cocaine. There have been published abuse liability studies of propofol in humans in which the reinforcement and reward effects have been demonstrated. These studies showed that propofol produces subjective effects most comparable to schedule IV sedatives. Generally, the studies demonstrated that propofol dose-dependently increased the reporting by the subject feeling "high," relative to the placebo.

The motivation for abuse of propofol is generally for its sedative and relaxing properties and induction of euphoric effects. There have also been reports that propofol's ability to induce sexual illusions and disinhibition contributes to its appeal as a drug of abuse. Anecdotal reports of propofol abusers described their experiences as "pleasant," "euphoric," and "relaxing".

The current abuse profiles of propofol indicate that it is abused by medical professionals since they have access to the drug in medical facilities which perform anesthesia (Adverse Event Reporting System (AERS) DataMart database). In the AERS database, there are reports of propofol diversion and abuse, some of which resulted in death. In 96 percent of these cases, the abusers were health care providers or were in training programs to become health care professionals. Propofol is not currently controlled by either the Federal Government or State governments, and may not be a target or priority of law

enforcement; therefore, information on reported seizures and cases from Federal, State and local law enforcement agencies is very limited.

Schedule IV sedative-hypnotics, such as methohexital and midazolam, are known to produce euphoric moods and have histories of abuse in the United States and other countries. There have been published case reports of individuals who became dependent on propofol. These reports indicated that the individuals expressed a "craving" for propofol, causing them to compulsively self-inject daily. They were abusing propofol for its relaxing and euphoric effects. In a survey of academic anesthesiology programs, 18 percent reported diversion or abuse of propofol. Twenty-eight percent of the reported abusers of propofol had died due to propofol overdose. The individuals who died were affiliated with health care facilities in which there were no pharmacy or security mechanisms to control access to propofol. In a published survey of certified registered nurse anesthetists, propofol was reported to be the fourth most preferred drug to misuse among this population. Propofol abuse is associated with significant adverse health effects, including death. The known major side effects include pancreatitis, pulmonary edema, cardiovascular depression, and respiratory depression. The cause of death with propofol toxicity is due to severe respiratory depression.

Withdrawal symptoms observed upon ceasing long-term administration of a substance are indicative of a substance's ability to produce physical dependence. There have been published reports of withdrawal symptoms upon an abrupt cessation of administration of propofol after a prolonged treatment. The symptoms include agitation, tremors, tachycardia, tachypnea, hyperpyrexia, confusion, and hallucinations. These symptoms are similar to the symptoms observed upon withdrawal from benzodiazepines. Withdrawal symptoms improve once administration of propofol is reinitiated. A delusional state lasting up to seven days may occur before full mental functioning returns. It should be noted that after a prolonged administration of propofol, the cessation of administration should be done cautiously and the patient should be monitored for any signs of a withdrawal syndrome.

Propofol has been on the market since 1989, but, due to propofol being unavailable to the general public, the seizures of propofol on the Federal, State and local levels are very low. Medical professionals are the predominant population who are abusers of propofol. Subsequent to DEA gathering and evaluating the available data on propofol, on July 2, 2009, DEA requested that DHHS provide a scientific and medical evaluation of the available information and a scheduling recommendation for propofol, in accordance with 21 U.S.C. 811(b). On May 14, 2010, the Assistant Secretary for Health, DHHS, sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that propofol be placed into schedule IV of the CSA. Enclosed with the April 30, 2010, letter was a document prepared by the Food and Drug Administration (FDA) entitled, "Basis for the Recommendation for Control of Propofol and Its Salts in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

The references to the studies used in the evaluations for DHHS' scheduling recommendation and DEA's independent analysis can be found in both documents. These documents are available on the electronic docket associated with this rule making.

The factors considered by the Assistant Secretary of Health and DEA with respect to propofol were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter. (21 U.S.C. 811(c))

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Propofol has a low potential for abuse relative to the drugs or substances in schedule III. The abuse potential of propofol is comparable to the schedule IV substances, methohexital and midazolam;

(2) Propofol has a currently accepted medical use in treatment in the United States; propofol under the trade name Diprivan[supreg] was approved for marketing as a product indicated for monitored anesthesia care by FDA in 1989; and

(3) Abuse of propofol may lead to limited psychological dependence or physical dependence relative to the drugs or other substances in schedule III.

Based on these findings, the Deputy Administrator of DEA concludes that propofol, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrants

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control in schedule IV of the CSA (21 U.S.C. 812(b)(4)).

Comments and Requests for Hearing

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of 21 CFR 1308.44 and 1316.47. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the regulations as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)," may request a hearing (21 CFR 1308.42). Please note that DEA may grant a hearing only "for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment, or repeal of a rule issuable" pursuant to 21 U.S.C. 811(a). All correspondence regarding this matter including comments, objections, and requests for hearing should be submitted to DEA using the address information provided above.

Requirements for Handling Propofol

If this rule is finalized as proposed, propofol would be subject to CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a schedule IV controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities with propofol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities, or conduct research with propofol, would need to be registered to conduct such activities in accordance with 21 CFR part 1301.

Security. Propofol would be subject to schedules III-V security requirements and would need to be manufactured, distributed, and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77. Labeling and Packaging. All labels and labeling for commercial containers of propofol which are distributed on or after finalization of this rule would need to comply with requirements of 21 CFR 1302.03- 1302.07.

Inventory. Every registrant required to keep records and who possesses any quantity of propofol would be required to keep an inventory of all stocks of propofol on hand pursuant to 21 CFR 1304.03, 1304.04 and 1304.11. Every registrant who desires registration in schedule IV for propofol would be required to conduct an inventory of all stocks of the substance on hand at the time of registration. Records. All registrants would be required to keep records pursuant to 21 CFR 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23.

Prescriptions. All prescriptions for propofol or prescriptions for products containing propofol would be required to be issued pursuant to 21 CFR 1306.03-1306.06 and 1306.21, 1306.22-1306.27.

Importation and Exportation. All importation and exportation of propofol would need to be in compliance with 21 CFR part 1312.

Criminal Liability. Any activity with propofol not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5

U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Propofol products are used for the initiation and maintenance of MAC sedation, combined sedation, and regional anesthesia for adult and pediatric patients undergoing diagnostic or therapeutic procedures. Handlers of propofol will also handle other controlled substances used for sedation which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: Or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (**21 U.S.C. 811**(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, **812**, **871**(b) unless otherwise noted.

2. **Section 1308.14** is amended by redesignating paragraphs (c)(46) through

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(c)(52) as paragraphs (c)(47) through (c)(53) and adding a new paragraph (c)(46) as follows:

Sec. 1308.14 Schedule IV.

* * * * * (c) * * *

(46) Propofol..... 2139

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Dated: October 19, 2010.

Michele M. Leonhart,
Deputy Administrator.

Rules 2009

FR Doc E9-11927[Federal Register: May 21, 2009 (Volume 74, Number 97)] [Rules and Regulations] [Page 23789-23790] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fr21my09-1]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-325F]

Schedules of Controlled Substances: Placement of Lacosamide into Schedule V

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the DEA places the substance lacosamide [(R)-2-acetoamido-N-benzyl- 3-methoxy-propionamide] and any material, compound, mixture, or preparation which contains any quantity of lacosamide into schedule V of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of schedule V will be applicable to the manufacture, distribution, dispensing, importation and exportation of lacosamide.

DATES: Effective Date: This rule is effective June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2008, the Food and Drug Administration (FDA) approved lacosamide [(R)-2-acetoamido-N -benzyl-3-methoxy-propionamide] for marketing under the trade name Vimpat[supreg] for use as an adjunctive therapy in treatment of partial-onset seizures in patients with epilepsy ages 17 years and older.

On December 2, 2008, the Assistant Secretary for Health of the Department of Health and Human Services (DHHS) sent the Administrator of the DEA a scientific and medical evaluation and a letter recommending that lacosamide be placed into schedule V of the CSA. Enclosed with the December 2, 2008, letter was a document prepared by the FDA entitled "Basis for the Recommendation for Control of Lacosamide in Schedule V of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (**21 U.S.C. 811**(b)).

Based on the recommendation of the Assistant Secretary for Health and an independent review of the available data by the DEA, the Deputy Administrator of the DEA, in a March 10, 2009, Notice of Proposed Rulemaking (74 FR 10205) proposed placement of lacosamide into schedule V of the CSA. The proposed rule provided an opportunity for all interested persons to submit their comments, objections, or requests for hearing to be received by the DEA on or before April 9, 2009.

Comments Received

DEA received one comment within the comment period in response to the Notice of Proposed Rulemaking. The commenter stated that lack of information and inappropriate comparisons to other drugs precluded the scheduling of lacosamide and suggested that scheduling be postponed for 24 months to collect data.

DEA does not agree. The studies used to assess abuse potential of lacosamide are widely held as the standard methods of evaluation. Behavioral effects of lacosamide in animals and humans were found to be similar to, but transient relative to, those of the schedule IV drugs alprazolam and phenobarbital. Preclinical studies indicated that lacosamide is self-administered at rates higher than saline and partially mimics discrimitive stimulus effects to the schedule IV substances alprazolam and phenobarbital. In clinical trials, lacosamide produced subjective responses similar to alprazolam but these effects did not

last as long as alprazolam. After careful consideration of positive indicators from preclinical and clinical studies, DEA finds lacosamide has abuse potential supporting placement in schedule V under the CSA. The DHHS recommended control in schedule V of the CSA and the DEA concurs.

The commenter also submitted a request for a hearing. DEA regulations provide that "[a]ny interested person" may request a hearing on a proposed scheduling action. **21 CFR 1308.44**(a). DEA regulations define "interested person" as "any person adversely affected or aggrieved by any rule or proposed rule issuable pursuant to [21 U.S.C. 811]." **21 CFR 1300.01**(b)(19). The regulations further require that any person requesting a hearing must state "with particularity" his interest in the proceeding. **21 CFR 1316.47** (a). The commenter failed to provide sufficient information to demonstrate that he meets the definition of "interested person" as set forth in the regulations, therefore DEA is denying his hearing request. DEA also received many comments after the comment period closed. These late comments were not considered by DEA.

Scheduling of Lacosamide

Based on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Lacosamide has a low potential for abuse relative to the drugs or other substances in schedule IV;

(2) Lacosamide has a currently accepted medical use in treatment in the United States; and

(3) Abuse of lacosamide may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

Based on these findings, the Deputy Administrator of the DEA concludes that lacosamide and any material, compound, mixture, or preparation which contains any quantity of lacosamide, warrant control in schedule V of the CSA.

Requirements for Handling Lacosamide

Registration. Any person who manufactures, distributes, dispenses,

[[Page 23790]]

imports, exports, engages in research or conducts instructional activities with lacosamide, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with lacosamide, must be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations (CFR). Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before June 22, 2009 and may continue their activities until the DEA has approved or denied the application.

Security. Lacosamide is subject to schedule III-V security requirements and must be manufactured, distributed, and stored in accordance with **Sec. Sec. 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77** of Title 21 of the CFR on and after June 22, 2009.

Labeling and Packaging. All labels and labeling for commercial containers of lacosamide which are distributed on or after June 22, 2009 must comply with requirements of **Sec. Sec. 1302.03-1302.07** of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of lacosamide must keep an inventory of all stocks of lacosamide on hand pursuant to **Sec. Sec. 1304.03, 1304.04 and 1304.11** of Title 21 of the CFR on or after June 22, 2009. Every registrant who desires registration in schedule V for lacosamide must conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to **Sec. Sec. 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23** of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Prescriptions. All prescriptions for lacosamide pharmaceutical products must be issued pursuant to **21 CFR 1306.03-1306.06 and 1306.21, 1306.23-1306.27** on or after June 22, 2009.

Importation and Exportation. All importation and exportation of lacosamide must be in compliance with part 1312 of Title 21 of the CFR on or after June 22, 2009.

Criminal Liability. Any activity with lacosamide not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after June 22, 2009 shall be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, Sec. 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Lacosamide pharmaceutical products will be prescription drugs used for the treatment of partial-onset seizures. Handlers of lacosamide often handle other controlled substances used in the treatment of central nervous system disorders which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sec. Sec. 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

- Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to Title 28, Part 0, Appendix to Subpart R, Section 12, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for **21 CFR part 1308** continues to read as follows:

Authority: 21 U.S.C. 811, **812, 871**(b) unless otherwise noted.

2. Section 1308.15 is amended by revising paragraph (e)(1) and adding a new paragraph (e)(2) to read as follows:

Sec. 1308.15 Schedule V.

* * * * *

(e) * * *

(1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]-- 2746 (2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]--2782

Dated: May 12, 2009.

USA TODAY

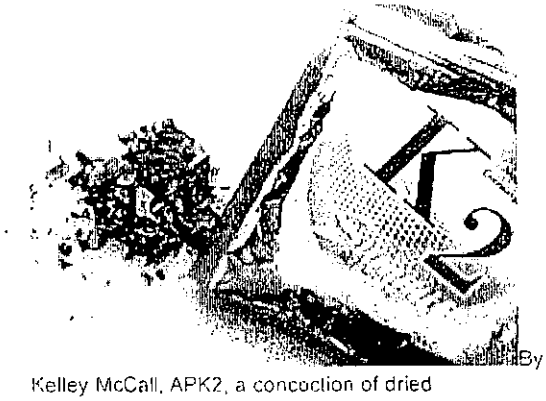
MARCH 1, 2011

DEA bans chemicals used to mimic marijuana

Updated 52m ago |

By Donna Leinwand, USA TODAY

The Drug Enforcement Administration on Tuesday banned for at least a year the chemicals used to make "K2" and "Spice," popular smokeable herbs that mimic the marijuana high.



Kelley McCall, APK2, a concoction of dried herbs sprayed with chemicals, is often marketed as legal, fake pot and labeled as herbal incense.

Enlarge

By Kelley McCall, AP

K2, a concoction of dried herbs sprayed with chemicals, is often marketed as legal, fake pot and labeled as herbal incense.

The DEA used its emergency power to control five chemicals used to coat the herbs. The DEA placed the chemicals into Schedule 1, the most restrictive category under the federal Controlled Substances Act. Schedule 1 drugs have a high potential for abuse and no accepted medical use.

At least 18 states have banned the chemicals.

LOCALITIES: Race to outlaw K2

"This is bad stuff. It causes a lot of problems," DEA spokesman Rusty Payne said. "It is our duty and our responsibility to act when there is an imminent threat to public health and safety. We believe it rises to these levels at the current time."

Spice and K2 emerged as popular drugs among teens and college students in 2009, Payne said. They are often marketed as legal, fake pot and labeled as herbal incense.

In the notice published in Tuesday's Federal Register, the DEA cited several instances in which people who smoked the the herbal incense became severely ill or had accidents. In September, police in Nebraska said a teenage boy careened his truck into the side of a house and then continued driving, hitting several more things before stopping, the notice said. The boy had "driven past a junior high school and nearly struck a child," the notice said.

USA TODAY

The boy admitted smoking "Wicked X," herbal incense coated with synthetic cannabinoids, the DEA said. Toxicology tests found no alcohol or illegal substances in his body.

"Just because something is legal or unregulated doesn't make it safe," Payne said. The emergency ban is effective for at least a year and can be extended for six months. It is illegal to possess or sell these chemicals or products made with them. The DEA had announced in November its intent to control the chemicals.

Federal scientists will study the chemicals, abuse data and their potential for addiction to determine whether they should be permanently controlled. The Department of Health and Human Services will make a final ruling.

"DEA follows the science," Payne said.

Shop owner says fake pot ban won't work

DULUTH, Minn. (AP) — The owner of a Duluth head shop says a new federal ban on the sale of five chemicals used to make synthetic marijuana won't make much difference — he'll just stock brands that use other, still-legal substances.

Jim Carlson, owner of the Last Place on Earth, said he will still stock top-selling brands of fake pot, which contain organic leaves coated with chemicals that provide a marijuana-like high when smoked.

"We're just going to pull in the ones with different compounds — and they are readily available," Carlson said.

Synthetic marijuana has been sold in drug paraphernalia shops and on the Internet under various brands including Spice, K2, Blaze and Red X Dawn.

The Drug Enforcement Agency's ban, imposed Tuesday, affects only five chemicals used in the products. Carlson said that with about 210 similar chemicals available, the manufacturers will try to keep one step ahead of the government.

"Unfortunately, he is correct," said Barbara Carreno, a DEA spokeswoman in Washington, who confirmed Tuesday that many suppliers are offering retailers products with new chemicals. "There are many of these substances and we chose five common ones because we don't have the resources to study all of them."

> **"We just think they're overstepping ... We plan to take it to the Supreme Court."**
>
> *Jim Carlson, owner of the Last Place on Earth*

Federal drug officials announced plans for the emergency measure in November amid increasing reports of bad reactions including seizures, hallucinations and dependency.

The ban is scheduled to remain in place for at least one year while researchers study the five chemicals.

Neither the banned chemicals nor the other ones that might take their place in synthetic marijuana products have been tested in humans, Carreno said, so nothing definitive is known about their short- or long-term effects on people.

She said it's dangerous for people to ingest these substances when they don't know what the physical or psychological effects will be.

Synthetic marijuana is a "highly profitable business," Carreno said, but most of the chemicals come from overseas, and many retailers have no idea what the active ingredients in the products are, and they may buy from dishonest suppliers. So that makes it even harder for consumers to evaluate what they're smoking, she said.

The Last Place on Earth is one of four Minnesota head shops that have sued to block the ban.

A federal judge threw out their lawsuit in January, saying it was premature because the DEA had not yet acted. But their attorney, Marc Kurzman, said he filed papers in U.S. District Court and with the 8th Circuit Court of Appeals on Monday seeking again to block the ban.

Kurzman contends the DEA has no authority to ban the chemicals and that its claims about their effects are false. Now that the DEA has imposed the ban, Kurzman said he believes the courts will rule in his clients' favor.

The other stores in the lawsuit are the Hideaway in Minneapolis, Down in the Valley in Golden Valley and Discontent in Moorhead.

"We just think they're overstepping their boundaries and treading on the Constitution," Carlson said. "We plan to take it to the Supreme Court."

And Carlson said he doesn't think his sales of fake pot will be stymied.

"Let's say I had a liquor store, and you like gin, and they say you can't have gin anymore," he said. "Well, you're probably going to keep coming back, but now you'll buy vodka."

Senate Bill 2119
March 7, 2011
House Judiciary Committee

Synthetic Cannabinoids
Charlene Schweitzer, Forensic Scientist
ND Office of Attorney General

Synthetic Cannabinoids have been a topic of concern around the state, nation, and all around the world. These are compounds that bind to the brain's cannabinoid receptors the same way as THC, the psychoactive ingredient in Marijuana. There are hundreds of synthetic cannabinoid compounds, with most having a completely different chemical structure than THC, a schedule I controlled substance. There are three types of cannabinoids: traditional cannabinoids are naturally found in Cannabis (Marijuana), endocannabinoids are found naturally in the body, and synthetic cannabinoids are synthesized in the laboratory. These synthetic compounds give users a "high" similar to THC but the short and long term effects are unknown.

The synthetic compounds are commonly dissolved into a solvent and sprayed onto herbal smoking mixtures which are labeled "not for human consumption" and sold as incense or room deodorizers. Numerous different brand names of these plant material blends have surfaced around the world. (Spice, Sparks, K2, etc) The brand names are not important since the composition of these products can change from batch to batch, both qualitatively and quantitatively.

The brain has two cannabinoid receptors, referred to as CB1 and CB2, which are responsible for a variety of physiological processes including appetite, pain sensation, mood and memory. The CB1 receptor is associated with the central nervous system and the CB2 receptor is associated with the immune system and anti-inflammatory properties. Compounds that bind more strongly or have higher affinity for the CB1 receptor are thought to be responsible for the pharmacological effects.

In 1964, tetrahydrocannabinol was identified as the pharmacological active compound in Marijuana. In the late 1960's, THC analogs started being developed by the pharmaceutical industry and academic laboratories to be investigated as potential pharmaceutical agents. In the 1970's, the cyclohexylphenols were developed by Pfizer pharmaceutical company and were different from traditional cannabinoids because of their dissimilar chemical structure. In 1988,

Recently, five new synthetic cannabinoids have surfaced that belong to a ninth group, called Benzoylindoles.

One of the major challenges in identifying these new compounds is the lack of authenticated standards. In order to make an identification of a compound, forensic labs must purchase an authenticated reference standard from a reputable chemical company and run it on their instruments under their conditions. Some of these compounds are so new that there isn't a standard available at this time and a "tentative" identification has to be made.

On March 1 2011, the DEA temporarily placed five synthetic cannabinoids into the Controlled Substances Act. The substances are JWH-018, JWH-073, JWH-200, CP47,497, and CP47,497 C8 homologue. As some compounds become controlled, new synthetic cannabinoids are being introduced to replace the ones that have become illegal. For this reason, it is a proactive approach for our state to control the groups, rather than specific chemical compounds. Nebraska is the first state to pass this approach. Other states that currently have legislation proposed are Idaho, Kansas, Florida, Texas, Missouri, Montana and Wyoming.

Here in North Dakota, we have identified twelve different synthetic cannbinoids and in addition to these, other states have identified an additional thirteen compounds.

North Dakota	Other States:
JWH-018	JWH-015
JWH-073	JWH-251
JWH-250	JWH-019
JWH-081	JWH-203
JWH-200	JWH-307
RCS-8	JWH-398
CP 47,497	AM-694
CP 47,497 C8 homologue	RCS-4 C4 homologue
AM-2201 (Tentative)	WIN 48,098
RCS-4	JWH-007
JWH-122	JWH-370
JWH-210	AM-630
	AM-1241