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EmR1318

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES
CONTROLLED SUBSTANCES BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : CONTROLLED SUBSTANCES BOARD
CONTROLLED SUBSTANCES BOARD : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 062-13, was approved by the Governor on May 29, 2013, published in Register 690 on June 15, 2013, and approved by Controlled Substances Board on July 15, 2013.

This emergency rule was approved by the Governor on September 20, 2013.

ORDER

An order of the Controlled Substances Board to create CSB 2.36 relating to scheduling controlled substances.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

The Controlled Substances Board finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Brown County District Attorney's office has provided the Controlled Substances Board with information relevant to emergency scheduling and the commencement of a prosecution concerning a controlled substance analog. UR-144, XLR-11 and AKB48 are pharmacologically similar to Schedule I substances THC and JWH-018. By sharing pharmacological similarities with the Schedule I substances, synthetic cannabinoids pose a risk both to the individual user and other affected individuals. UR-144, XLR-11 and AKB48 are being marketed as "legal" alternatives to marijuana. This characterization (and the reputation as potent herbal intoxicants) has increased their popularity and prevalence.

The Controlled Substances Board finds that scheduling of UR-144, XLR-11 and AKB48 on an emergency basis is necessary to avoid an imminent hazard to the public safety.

The substances are not included in any other schedule and no exemption or approval is in effect for the substance under 21 USC 355.

On May 16, 2013, the U.S. Department of Justice Drug Enforcement Administration emergency scheduled UR-144, XLR11, and AKB48 as Schedule I, illegal drugs under the Controlled Substances Act.

ANALYSIS

Statutes interpreted: § 961.14, Wis. Stats.

Statutory authority: §§ 961.11(1) and 961.11(4m), Wis. Stats.

Explanation of agency authority:

The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 pursuant to the rule-making procedures of ch. 227.

The controlled substances board, by rule and without regard to the requirements of sub. (1m), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (1m) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a rule-making proceeding under subs. (1), (1m), (1r) and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (1), (1m), (1r) and (2) with respect to the substance.

Related statute or rule: § 961.14, Wis. Stats.

Plain language analysis:

This rule schedules three substances commonly known as UR-144, XLR-11 and AKB48 as Schedule I controlled substances.

Summary of, and comparison with, existing or proposed federal regulation:

On May 16, 2013, the U.S. Department of Justice Drug Enforcement Administration emergency scheduled UR-144, XLR-11, and AKB48 as Schedule I, illegal drugs under the Controlled Substances Act.

Comparison with rules in adjacent states:

Illinois: A review of the Illinois Controlled Substances Act does not indicate scheduling of these three substances.

Iowa: On July 9, 2013, Iowa Pharmacy Board temporarily classified these three substances as Schedule I controlled substances. The temporary scheduling action by emergency action will remain effective until 60 days following the commencement of the next legislative session, during which time the Iowa Legislature will determine whether to add the substances to the Iowa Controlled Substances Act.

Michigan: These three substances are scheduled in Michigan based upon any other synthetic chemical compound that is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring cannabinoids that is not listed in schedules II through V and is not approved by the federal food and drug administration as a drug.

Minnesota: A review of the Minnesota Controlled Substances Act does not indicate scheduling of these three substances.

Summary of factual data and analytical methodologies:

Based upon the Brown County District Attorney's request for emergency scheduling and the federal government's emergency scheduling, the Controlled Substances Board decided to schedule UR-144, XLR-11 and AKB48.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

This proposed rule schedules three synthetic cannabinoid substances as Schedule I controlled substances which will not have an effect on small business.

Fiscal Estimate:

This proposed rule will have no fiscal impact.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

TEXT OF RULE

SECTION 1. CSB 2.36 is created to read:

CSB 2.36 Additions to Schedule 1.

(1) Section 961.14(4)(ta), Stats., is created to read:

Section 961.14(4)(ta) AKB48: 1-pentyl-N-(1-adamantyl)-1H-indazole-3-carboxamide.

(2) Section 961.14(4)(tym), Stats., is created to read:

Section 961.14(4)(tym) UR-144: 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole

(3) Section 961.14(4)(tz), Stats., is created to read:

Section 961.14(4)(tz) XLR-11: 1-(5-fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole

SECTION 2. EFFECTIVE DATE. Pursuant to s. 227.24 (1) (c), Stats., these rules shall take effect upon publication in the official state newspaper.

(END OF TEXT OF RULE)

This Order of the Controlled Substances Board is approved for submission to the Governor

Dated 9/14/13

Agency /s/ Doug Englebert
Member of the Board
Controlled Substances Board