

STATE OF WISCONSIN
CONTROLLED SUBSTANCES BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CONTROLLED SUBSTANCES BOARD
CONTROLLED SUBSTANCES BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 23-020)

PROPOSED ORDER

An order of the Controlled Substances Board to create CSB 2.94 relating to scheduling seven (7) synthetic benzimidazole-opioid substances.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 961.14, Stats.

Statutory authority: s. 961.11 (1) and (4), Stats.

Explanation of agency authority:

Section 961.11 (1), Stats. provides that “[t]he 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.”

Section 961.11(4), Stats. provides that “[i]f a substance is designated, rescheduled or deleted as a controlled substance under federal law and notice thereof is given to the controlled substances board, the board by affirmative action shall similarly treat the substance under this chapter after the expiration of 30 days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under 21 USC 811 (h), unless within that 30–day period, the board or an interested party objects to the treatment of the substance. If no objection is made, the board shall promulgate, without making the determinations or findings required by subs. (1), (1m), (1r) and (2) or s. 961.13, 961.15, 961.17, 961.19 or 961.21, a final rule, for which notice of proposed rulemaking is omitted, designating, rescheduling, temporarily scheduling or deleting the substance. If an objection is made the board shall publish notice of receipt of the objection and the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall make a determination with respect to the treatment of the substance as provided in subs. (1), (1m), (1r) and (2) and shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the treatment by the board, action by the board under this chapter is stayed until the board promulgates a rule under sub. (2).”

Related statute or rule: s. 961.14, Stats.

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

On April 12, 2022, the Department of Justice, Drug Enforcement Administration published its temporary scheduling order in the Federal Register placing the following seven (7) synthetic benzimidazole-opioid substances into schedule I of the federal Controlled Substances Act. The scheduling action was effective immediately.

Plain language analysis:

This rule adds seven (7) synthetic benzimidazole-opioid substances to schedule I under ch. 961, Stats. This rule also amends ss. 961.14 (2) (mm) and (pe), Stats. to add the scientific descriptions for two already scheduled synthetic benzimidazole-opioid substances and renumber them to group them with the seven new substances being added.

The Controlled Substances Board did not receive an objection to similarly treating the following seven (7) synthetic benzimidazole-opioid substances as schedule I under ch. 961, Stats. within 30 days of the date of publication in the federal register of the final order designating them as controlled substances:

- 2-(2-(4-butoxybenzyl)-5-nitro-1Hbenzimidazol-1-yl)-N,N-diethylethan-1- amine (butonitazene),
- 2-(2-(4-ethoxybenzyl)-1Hbenzimidazol-1-yl)-N,N-diethylethan-1- amine (etodesnitazene; etazene),
- N,N-diethyl-2-(2-(4-fluorobenzyl)-5- nitro-1H-benzimidazol-1-yl)ethan-1- amine (flunitazene),
- N,N-diethyl-2-(2-(4- methoxybenzyl)-1H-benzimidazol-1- yl)ethan-1-amine (metodesnitazene),
- N,N-diethyl-2-(2-(4- methoxybenzyl)-5-nitro-1Hbenzimidazol-1-yl)ethan-1-amine (metonitazene),
- 2-(4-ethoxybenzyl)-5-nitro-1-(2- (pyrrolidin-1-yl)ethyl)-1Hbenzimidazole (N-pyrrolidino etonitazene; etonitazepyne), and
- N,N-diethyl-2-(5-nitro-2-(4- propoxybenzyl)-1H-benzimidazol-1- yl)ethan-1-amine (protonitazene).

Therefore, pursuant to s. 961.11(4), Stats., the Controlled Substances Board by Affirmative Action similarly treated the seven (7) synthetic benzimidazole-opioid substances listed above, under chapter 961, Stats and is now following up with a final rule.

The Affirmative Action order, dated July 20, 2022, took effect on July 25, 2022, when it was published in the Administrative Register and expires upon promulgation of a final rule.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: N/A

Comparison with rules in adjacent states:

Illinois: Illinois has not included the seven (7) synthetic benzimidazole-opioid substances listed in this rule as schedule I controlled substances [720 Illinois Compiled Statutes 570/204].

Iowa: Iowa has not included the seven (7) synthetic benzimidazole-opioid substances listed in this rule as schedule I controlled substances [Iowa Code 124.204].

Michigan: Michigan has not included the seven (7) synthetic benzimidazole-opioid substances listed in this rule as schedule I controlled substances [Michigan Compiled Laws s. 333.7212].

Minnesota: Minnesota has not included the seven (7) synthetic benzimidazole-opioid substances listed in this rule as schedule I controlled substances [Minnesota Statutes 152.02 (2)].

Summary of factual data and analytical methodologies:

The methodology was to schedule seven (7) synthetic benzimidazole-opioid substances to conform with the federal Controlled Substances Act.

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

The rule schedules seven (7) synthetic benzimidazole-opioid substances as Schedule III controlled substances which will not have any effect on small business.

Fiscal Estimate:

The proposed rule was posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

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 Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received by July 14, 2023 to be included in the record of rulemaking proceedings.

TEXT OF RULE

SECTION 1. CSB 2.94 is created to read:

CSB 2.94 Addition of seven (7) synthetic benzimidazole-opioid substances to schedule I.

(1) Section 961.14 (2) (mm) and (pe), Stats. are renumbered to 961.14 (2) (xm) 3. and 5. And amended to read:

961.14 (2) (xm) 3. Etonitazene (2-(2-(4-ethoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1- amine).

961.14 (2) (xm) 5. Isotonitazene (N,N -diethyl-2-(2-(4-isopropoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine).

(2) Section 961.14 (2) (xm) 1., 2., 4., and 6. to 9., Stats., are created to read:

961.14 (2) (xm) Synthetic Benzimidazole-opioid Substances, specifically including all of the following:

1. Butonitazene (2-(2-(4-butoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine).
2. Etodesnitazene also known as Etazene (2-(2-(4-ethoxybenzyl)-1H-benzimidazol-1-yl)-N,N-diethylethan-1- amine).
4. Flunitazene (N,N-diethyl-2-(2-(4-fluorobenzyl)-5- nitro-1H-benzimidazol-1-yl)ethan-1-amine).
6. Metodesnitazene (N,N-diethyl-2-(2-(4- methoxybenzyl)-1H-benzimidazol-1- yl)ethan-1-amine).
7. Metonitazene (N,N-diethyl-2-(2-(4- methoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine).
8. N-pyrrolidino etonitazene also known as etonitazepyne (2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole).
9. Protonitazene (N,N-diethyl-2-(5-nitro-2-(4- propoxybenzyl)-1H-benzimidazol-1- yl)ethan-1-amine).

SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Controlled Substances Board is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Chairperson
Controlled Substances Board