

STATEMENT OF SCOPE

CONTROLLED SUBSTANCES BOARD

Rule No.: CSB 2.78

Relating to: Scheduling Crotonyl Fentanyl

Rule Type: Permanent

1. Finding/nature of emergency:

N/A

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to schedule Crotonyl Fentanyl as a schedule I controlled substance under s. 961.11 (4), Stats.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

On October 2, 2020, the Department of Justice, Drug Enforcement Administration published a final rule in the Federal Register placing Crotonyl Fentanyl into schedule I of the federal Controlled Substances Act. The scheduling action was effective October 2, 2020.

The Controlled Substances Board did not receive an objection to similarly treating Crotonyl Fentanyl as a schedule I controlled substance under ch. 961, Stats. within 30 days of the date of publication in the federal register of the final order designating Crotonyl Fentanyl as a controlled substance.

The Controlled Substances Board will promulgate a final rule, without making the determinations or findings required by ss. 961.11(1), (1m), (1r) and (2) or s. 961.19 and omitting the notice of proposed rule making, designating Crotonyl Fentanyl as a schedule I controlled substance.

Pursuant to s. 961.11 (4), Stats., the Controlled Substances Board took affirmative action to similarly treat Crotonyl Fentanyl under ch. 961, Stats. by creating the following:

961.14 (2) (nd) 9m. Crotonyl Fentanyl ((E)-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-enamide).

The order took effect on November 23, 2020 following publication in the Administrative Register. The order expires upon promulgation of a permanent rule, which will be promulgated under this scope statement.

4. Detailed explanation of statutory authority for the rule:

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).”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

Approximately 80 hours.

6. List with description of all entities that may be affected by the proposed rule :

Law enforcement, district attorney offices, Department of Justice, state courts and the Controlled Substances Board.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

On October 2, 2020, the Department of Justice, Drug Enforcement Administration published a final rule in the Federal Register placing Crotonyl Fentanyl into schedule I of the federal Controlled Substances Act. The scheduling action was effective October 6, 2020.

8. Anticipated economic impact of implementing the rule :

None to minimal.

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