

STATE OF WISCONSIN
CONTROLLED SUBSTANCES BOARD

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

ORDER

An order of the Controlled Substances Board to create CSB 2.72 relating to scheduling isotonitazene and 1P-LSD.

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.

The Walworth 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 pursuant to s. 961.25, Stats. The Milwaukee Medical Examiner's office has provided the Controlled Substances Board with information involving recent overdose cases, including deaths, that have involved isotonitazene in Milwaukee, Walworth and Jefferson Counties. Isotonitazene is an analog of etonitazene which is a Schedule I controlled substance.

The Calumet 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 pursuant to s. 961.25, Stats. 1P-LSD is an analog of lysergic acid diethylamide, commonly known as "LSD", which is a Schedule I controlled substance.

The Controlled Substances Board finds that scheduling isotonitazene and 1P-LSD on an emergency basis is necessary to avoid an imminent hazard to the public safety. These substances are not included in any other schedule and no exemption or approval is in effect for the substances under 21 USC 355.

The Controlled Substances Board considered the following factors in making the finding of an imminent hazard to the public safety: the history and current pattern of abuse; the scope, duration and significance of abuse; and the risk to the public health.

ANALYSIS

Statutes interpreted: s. 961.14, Stats.

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

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. (s. 961.11 (4m), Stats.)

Related statute or rule: s. 961.14, Stats.

Plain language analysis:

This rule schedules isotonitazene and 1P-LSD as Schedule I controlled substances.

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

Isotonitazene and 1P-LSD are not currently scheduled under the Controlled Substances Act.

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 scheduled isotonitazene or 1P-LSD as controlled substances.

Iowa: Iowa has not scheduled isotonitazene or 1P-LSD as controlled substances.

Michigan: Michigan has not scheduled isotonitazene or 1P-LSD as controlled substances.

Minnesota: Minnesota has not scheduled isotonitazene or 1P-LSD as controlled substances.

Summary of factual data and analytical methodologies:

Based upon the Walworth County District Attorney's request for emergency scheduling, additional information from the Milwaukee Medical Examiner and the finding of an imminent hazard to the public safety, the Controlled Substances Board decided to schedule isotonitazene. Based upon the Calumet County District Attorney's request for emergency scheduling and the finding of an imminent hazard to the public safety, the Controlled Substances Board decided to schedule 1P-LCD. In making the findings of imminent hazard to the public safety, the Controlled Substances Board considered the following factors: the history and current pattern of abuse; the scope, duration and significance of abuse; and the risk to the public health.

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

The rule schedules two synthetic drugs as Schedule I controlled substances which will not have any effect on small business.

Fiscal Estimate:

There is 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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, 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 608-261-2377; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, 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 at or before the public hearing to be held on July 10, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. CSB 2.72 is created to read:

CSB 2.72 Scheduling of isotonitazene and 1P-LCD. Section 961.14 (2) (pe) and (4) (jm), Stats., are created to read:

961.14 (2) (pe) Isotonitazene.

961.14 (4) (jm) 1-propionyl-lysergic acid diethylamide, commonly known as 1P-LSD.

SECTION 2. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper.

(END OF TEXT OF RULE)

Dated May 29, 2020



Chair
Controlled Substances Board