

STATE OF WISCONSIN  
CONTROLLED SUBSTANCES BOARD

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

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PROPOSED ORDER

An order of the Controlled Substances Board to create CSB 2.50 relating to scheduling of AB-CHMINACA, AB-PINACA and THJ-2201.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 961.14, Stats.

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

**Explanation of agency authority:**

If 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). [s. 961.11(4), Stats.]

**Related statute or rule:** s. 961.14, Stats.

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

On January 30, 2015, the Department of Justice, Drug Enforcement Administration published its final rule in the Federal Register placing AB-CHMINACA, AB-PINACA and THJ-2201 into Schedule I of the federal Controlled Substances Act.

**Plain language analysis:**

The Controlled Substances Board did not receive an objection to treating AB-CHMINACA, AB-PINACA and THJ-2201 as schedule I controlled substances under ch. 961, Stats. based upon the federal scheduling. The Controlled Substances Board took affirmative action on March 23, 2017 to similarly treat AB-CHMINACA, AB-PINACA and THJ-2201 under chapter 961 effective March 27, 2017 to allow for publication in the Administrative Register. The Affirmative Action Order will expire upon promulgation of a final rule.

This rule creates s. 961.14 (4) (tb) 34., 35. and 36., Stats. which adds AB-CHMINACA, AB-PINACA and THJ-2201 to schedule I.

**Comparison with rules in adjacent states:**

**Illinois:** Illinois scheduled AB-CHMINACA, AB-PINACA and THJ-2201 as schedule I controlled substances.

**Iowa:** Iowa scheduled AB-CHMINACA, AB-PINACA and THJ-2201 as schedule I controlled substances.

**Michigan:** Michigan has not scheduled these substances.

**Minnesota:** Minnesota scheduled AB-CHMINACA, AB-PINACA and THJ-2201 as schedule I controlled substances.

**Summary of factual data and analytical methodologies:**

The methodology was to schedule AB-CHMINACA, AB-PINACA and THJ-2201 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:**

This rule schedules drugs and does not have an effect on small business.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis is attached.

**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 Kirsten.Reader@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, 1400 East Washington Avenue, Room 151, 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, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received by January 11, 2018 to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. CSB 2.50 is created to read:

**CSB 2.50 Addition of AB-CHMINACA, AB-PINACA and THJ-2201 to schedule I.**

Sections 961.14(4)(tb)34., 35. and 36., Stats., are created to read:

**961.14(4)(tb)34.** *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide, commonly known as AB-CHMINACA.

35. *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide, commonly known as AB-PINACA.

36. [1-(5-fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone, commonly known as THJ-2201.

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.

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(END OF TEXT OF RULE)

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original    Updated    Corrected

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2. Administrative Rule Chapter, Title and Number

CSB 2.50

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3. Subject

Scheduling AB-CHMINACA, AB-PINACA and THJ-2201

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4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

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5. Chapter 20, Stats. Appropriations Affected

s. 20.165(1)(g)

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses **(if checked, complete Attachment A)**

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    No

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9. Policy Problem Addressed by the Rule

The United States Department of Justice, Drug Enforcement Administration scheduled AB-CHMINACA, AB-PINACA and THJ-2201 as schedule I controlled substances effective January 30, 2015. The Wisconsin Controlled Substances Board took affirmative action on March 23, 2017 to similarly treat AB-CHMINACA, AB-PINACA and THJ-2201 as schedule I controlled substances effective March 27, 2017. The Board is currently promulgating a final rule.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This rule was posted for economic comments and none were received.

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11. Identify the local governmental units that participated in the development of this EIA.

None

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule will not have a fiscal or economic impact.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefit is for the federal and state controlled substances acts to be in conformity and alleviate confusion. In addition, it is in the best interest of Wisconsin citizens to schedule AB-CHMINACA, AB-PINACA and THJ-2201 as controlled substances.

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14. Long Range Implications of Implementing the Rule

AB-CHMINACA, AB-PINACA and THJ-2201 will be treated as schedule I controlled substances.

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15. Compare With Approaches Being Used by Federal Government

The federal government has scheduled AB-CHMINACA, AB-PINACA and THJ-2201 as schedule I controlled substance.

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois, Iowa and Minnesota have scheduled AB-CHMINACA, AB-PINACA and THJ-2201 as controlled substances. Michigan has not scheduled these drugs.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

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17. Contact Name

Sharon Henes

18. Contact Phone Number

(608) 261-2377

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
  - Less Stringent Schedules or Deadlines for Compliance or Reporting
  - Consolidation or Simplification of Reporting Requirements
  - Establishment of performance standards in lieu of Design or Operational Standards
  - Exemption of Small Businesses from some or all requirements
  - Other, describe:
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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