

STATE OF WISCONSIN
CONTROLLED SUBSTANCES BOARD

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| IN THE MATTER OF RULE-MAKING | : | NOTICE OF TIME PERIOD |
| PROCEEDINGS BEFORE THE | : | FOR COMMENTS FOR THE |
| CONTROLLED SUBSTANCES BOARD | : | ECONOMIC IMPACT ANALYSIS |

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Controlled Substances Board relating to scheduling of N-Ethylpentylone, including how this proposed rule may affect businesses, local government units and individuals. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to § 227.137. Written comments may be submitted to:

Sharon Henes, Administrative Rules Coordinator
Division of Policy Development
Department of Safety and Professional Services
PO Box 8366
Madison, WI 53708-8935
DSPSAdminRules@wisconsin.gov

The deadline for submitting economic impact comments is February 14, 2019.

PROPOSED ORDER

An order of the Controlled Substances Board to create CSB 2.64 relating to scheduling of N-Ethylpentylone.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 961.14, Stats.

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

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 August 31, 2018, the Department of Justice, Drug Enforcement Administration published its final rule in the Federal Register placing N-Ethylpentylone into Schedule I of the federal Controlled Substances Act.

Plain language analysis:

The Controlled Substances Board did not receive an objection to treating N-Ethylpentylone as a schedule I controlled substance under ch. 961, Stats. based upon the federal scheduling. The Controlled Substances Board took affirmative action on October 3, 2018 to similarly treat N-Ethylpentylone under chapter 961 effective October 8, 2018 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 (7) (L) 34., Stats. which adds N-Ethylpentylone to schedule I.

Comparison with rules in adjacent states:

Illinois: Illinois has not scheduled N-Ethylpentylone.

Iowa: Iowa has not scheduled N-Ethylpentylone.

Michigan: Michigan has not scheduled N-Ethylpentylone.

Minnesota: Minnesota has not scheduled N-Ethylpentylone.

Summary of factual data and analytical methodologies:

The methodology was to schedule N-Ethylpentylone 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:

Fiscal Estimate and Economic Impact Analysis:

The department is currently soliciting information and advice from businesses, local government units and individuals in order to prepare the Economic Impact Analysis.

Effect on small business:

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 608-266-2377; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. CSB 2.64 is created to read:

CSB 2.64 Addition of N-Ethylpentylone to schedule I. Section 961.14 (7) (L) 34., Stats., is created to read:

961.14 (7) (L) 34. N-Ethylpentylone, commonly known as ephylone.

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)
