

STATEMENT OF SCOPE

CONTROLLED SUBSTANCES BOARD

Rule No.: CSB 2.70

Relating to: Scheduling MMB-FUBICA and 4F-MDMB-BINACA

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

The Green 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. MMB-FUBICA is pharmacologically similar to Schedule I substance FUB-AMB and MDMB-BINACA is pharmacologically similar to Schedule I substance 5F-ADB. By sharing pharmacological similarities with the Schedule I substances, synthetic cannabinoids pose a risk both to the individual user and other individuals. MMB-FUBICA and MDMB-BINACA are being marketed as "legal" alternatives to marijuana. This characterization has increased their popularity and prevalence.

The Controlled Substance Board finds that scheduling MMB-FUBICA and MDMB-BINACA on an emergency basis is necessary to avoid an imminent hazard to the public safety. The substances are not included in any other schedule and no exemption or approval is in effect for the substance under 21 USC 355.

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

The objective is to schedule MMB-FUBICA and MDMB-BINACA as Schedule I controlled substances.

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:

Currently Wisconsin has not scheduled MMB-FUBICA and MDMB-BINACA as controlled substances. MMB-FUBICA and MDMB-BINACA are synthetic cannabinoids on the designer drug market. They have been found laced on plant material and marketed under the guise of herbal incense products. Behavioral pharmacology studies show MMB-FUBICA and MDMB-BINACA are similar to THC and various synthetic cannabinoids which are Schedule I substances. Poison control centers continue to report adverse health effects in response to the abuse of herbal incense products and this abuse is both a public health and safety concern.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

961.11 (1) 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.

961.11(4m) 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
Rev. 3/6/2012

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 rulemaking 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.

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

60 hours

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

Law enforcement, district attorney offices, Dept 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:

The federal government has not scheduled MMB-FUBICA and 4F-MDMB-BINACA. However, they may be treated as a controlled substance analog under the Controlled Substances Act.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There is no anticipated economic impact of implementing the rule and it will not have an economic impact on small businesses.

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Authorized Signature

May 4, 2020

Date Submitted