

**STATE OF WISCONSIN
CONTROLLED SUBSTANCES BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
CONTROLLED SUBSTANCES BOARD : CR 20-022**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS: N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Based upon the Green 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 MMB-FUBICA and 4F-MDMB-BINACA. 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.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Controlled Substances Board held a public hearing on August 18, 2020. No comments were received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2: In Section 1 of the proposed rule, the text of the created provisions should be shown without italics.

Response: Legislative Council withdrew this comment based on discussion with the rule coordinator, determining that the text should in fact be italicized to reflect that this is a change to statute.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS: N/A

STATE OF WISCONSIN
CONTROLLED SUBSTANCES BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CONTROLLED SUBSTANCES BOARD
CONTROLLED SUBSTANCES BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 20-022)

PROPOSED ORDER

An order of the Controlled Substances Board to create CSB 2.70, relating to scheduling MMB-FUBICA and 4F-MDMB-BINACA.

Analysis prepared by the Department of Safety and Professional Services.

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 MMB-FUBICA and 4F-MDMB-BINACA as Schedule I controlled substances.

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

MMB-FUBICA and 4F-MDMB-BINACA 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 MMB-FUBICA and 4F-MDMB-BINACA as controlled substances.

Iowa: Iowa has not scheduled MMB-FUBICA and 4F-MDMB-BINACA as controlled substances.

Michigan: Michigan has not scheduled MMB-FUBICA and 4F-MDMB-BINACA as controlled substances.

Minnesota: Minnesota has not scheduled MMB-FUBICA and 4F-MDMB-BINACA as controlled substances.

Summary of factual data and analytical methodologies:

Based upon the Green 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 MMB-FUBICA and 4F-MDMB-BINACA. 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 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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, 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 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

The public hearing on this rule was held on August 18, 2020. No comments were received.

TEXT OF RULE

SECTION 1. CSB 2.70 is created to read:

CSB 2.70 Scheduling 4F-MDMB-BINACA and MMB-FUBICA. Section 961.14 (4) (tb) 38m. and 43m., Stats., are created to read:

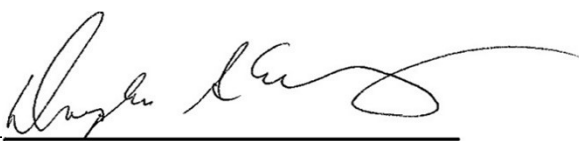
961.14 (4) (tb) 38m. Methyl 2-(1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, commonly known as 4F-MDMB-BINACA or 4F-MDMB-BUTINACA.
43m. Methyl 2-(1-(4-fluorobenzyl)-1H-indole-3-carboxamido)-3-methylbutanoate, commonly known as MMB-FUBICA or AMB-FUBICA.

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)

This Proposed Order of the Controlled Substances Board is approved for submission to the Governor and Legislature.

Dated: October 23, 2020

Agency 
Chair

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 30 June 2020
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) CSB 2.70	
4. Subject Scheduling MMB-FUBICA and 4F-MDMB-BINACA	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The Green County District Attorney's Office requested emergency scheduling of MMB-FUBICA and 4F-MDMB-BINACA. The Controlled Substances Board made a determination on an imminent hazard to the public.	
12. 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.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.	
14. 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.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule MMB-FUBICA and 4F-MDMB-BINACA will be schedule I controlled substances.	
16. Long Range Implications of Implementing the Rule MMB-FUBICA and 4F-MDMB-BINACA would be treated as schedule I controlled substances.	
17. Compare With Approaches Being Used by Federal Government The federal government has not scheduled MMB-FUBICA and 4F-MDMB-BINACA.	
18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota) Our surrounding states have not scheduled MMB-FUBICA and 4F-MDMB-BINACA.	
19. Contact Name Sharon Henes	20. Contact Phone Number 608-358-4617

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

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

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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)

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

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:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

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

- Yes No
-