

**STATE OF WISCONSIN
CONTROLLED SUBSTANCES BOARD**

IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
CONTROLLED SUBSTANCES BOARD : **CR 20-078**

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:

On April 17, 2020, the Department of Justice, Drug Enforcement Administration - published its final rule in the Federal Register placing norfentanyl into Schedule II of the federal Controlled Substances Act effective May 18, 2020.

The Controlled Substances Board did not receive an objection to treating norfentanyl as a schedule II controlled substance under ch. 961, Stats., based upon the federal scheduling. The Controlled Substances Board took affirmative action on June 23, 2020 to similarly treat norfentanyl under chapter 961 effective June 29, 2020 to allow for publication in the Administrative Register. The Affirmative Action Order will expire upon promulgation of a final rule.

This rule renumbers and amends 961.16 (8) (b) (intro.), Stats., and creates 961.16 (8) (b) 2. which adds norfentanyl to schedule II.

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

Per s. 961.11(4), Stats., if no objection is made, the board shall promulgate a final rule for which notice of proposed rulemaking is omitted. Therefore, the Board did not hold a public hearing.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Legislative Council staff did not make any recommendations.

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 20-078)

PROPOSED ORDER

An order of the Controlled Substances Board to create CSB 2.76 relating to scheduling of norfentanyl.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 961.16, Stats.

Statutory authority: s. 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 April 17, 2020, the Department of Justice, Drug Enforcement Administration published its final rule in the Federal Register placing norfentanyl into Schedule II of the federal Controlled Substances Act effective May 18, 2020.

Plain language analysis:

The Controlled Substances Board did not receive an objection to treating norfentanyl as a schedule II controlled substance under ch. 961, Stats., based upon the federal scheduling. The Controlled Substances Board took affirmative action on June 23, 2020 to similarly treat norfentanyl under chapter 961 effective June 29, 2020 to allow for publication in the Administrative Register. The Affirmative Action Order will expire upon promulgation of a final rule.

This rule renumbers and amends 961.16 (8) (b) (intro.), Stats., and creates 961.16 (8) (b) 2. which adds norfentanyl to schedule II.

Comparison with rules in adjacent states:

Illinois: Illinois has not scheduled norfentanyl.

Iowa: Iowa has not scheduled norfentanyl.

Michigan: Michigan has not scheduled norfentanyl.

Minnesota: Minnesota has not scheduled norfentanyl.

Summary of factual data and analytical methodologies:

The methodology was to schedule norfentanyl 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 a drug and does not have an effect on small business. The rule draft was posted on the department's website for 14 days to solicit economic impact comments from small businesses. No comments were received.

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:

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received by January 14, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. CSB 2.76 is created to read:

CSB 2.76 Addition of norfentanyl to schedule II. (1) Section 961.16 (8) (b), Stats., is renumbered 961.16 (8) (b) (intro.) and amended to read:

961.16 (8) (b) An immediate precursor to fentanyl, including all of the following:

1. 4-anilino-N-phenethyl-4-piperidine, commonly known as ANPP.

(2) Section 961.16 (8) (b) 2., Stats. is created to read:

2. N-phenyl-N-(piperidin-4-yl)propionamide, commonly known as norfentanyl.

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 February 1, 2021



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 November 12, 2020
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) CSB 2.76	
4. Subject Scheduling norfentanyl	
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	
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 On April 17, 2020, the Department of Justice, Drug Enforcement Administration published its final rule in the Federal Register placing norfentanyl into Schedule II of the federal Controlled Substances Act effective May 18, 2020.	
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. The rule was posted on the department's website for 14 days to solicit economic impact comments from businesses, business sectors, associations representing business, local governmental units, and individuals. No comments 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) No impact.	
15. 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 norfentanyl as a controlled substance.	
16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule will be to schedule norfentanyl as a schedule II controlled substance.	
17. Compare With Approaches Being Used by Federal Government The federal government has scheduled norfentanyl as a schedule II controlled substance.	
18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota) Illinois: Illinois has not scheduled norfentanyl.	

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

Iowa: Iowa has not scheduled norfentanyl.

Michigan: Michigan has not scheduled norfentanyl.

Minnesota: Minnesota has not scheduled norfentanyl.

19. Contact Name	20. Contact Phone Number
Jon Derenne	(608) 266-0955

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:
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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
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