STATE OF WISCONSIN
CONTROLLED SUBSTANCES BOARD

IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
CONTROLLED SUBSTANCES BOARD : CR 21-098

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 October 30, 2020, the Department of Justice, Drug Enforcement Administration published its interim final rule in the Federal Register listing oliceridine into schedule II of the federal Controlled Substances Act. The scheduling action was effective October 30, 2020.

The Controlled Substances Board did not receive an objection to similarly treat oliceridine as a Schedule II controlled substance under ch. 961, Stats. within 30 days of the date of publication in the Federal Register of the final order designating oliceridine as a controlled substance.

This rule schedules oliceridine as a Schedule II controlled substance.

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 21-098)

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PROPOSED ORDER

An order of the Controlled Substances Board to create CSB 2.80 relating to scheduling Oliceridine.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

Statutes interpreted:  s. 961.16, Stats.

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

Explanation of agency authority:

Section 961.11 (1), Stats. provides that “[t]he 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.”

Section 961.11(4), Stats. provides that “[i]f 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).”

Related statute or rule:  s. 961.16, Stats.

Summary of, and comparison with, existing or proposed federal regulation:
On October 30, 2020, the Department of Justice, Drug Enforcement Administration published its interim final rule in the Federal Register listing Oliceridine into schedule II of the federal Controlled Substances Act. The scheduling action was effective October 30, 2020.

**Plain language analysis:**

This rule schedules Oliceridine as a Schedule II controlled substance.

The Controlled Substances Board did not receive an objection to similarly treat Oliceridine as a Schedule II controlled substance under ch. 961, Stats. within 30 days of the date of publication in the Federal Register of the final order designating Oliceridine as a controlled substance.

Pursuant to s. 961.11 (4), Stats., the Controlled Substances Board took affirmative action to similarly treat Oliceridine under ch. 961, Stats. by creating the following:

961.16 (3) (ta)  Oliceridine.

The Affirmative Action order, dated December 7, 2020, took effect on December 14, 2020 to allow for publication in the Administrative Register and expires upon promulgation of a final rule.

**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 Oliceridine as a controlled substance.

**Iowa:**  Iowa has not scheduled Oliceridine as a controlled substance.

**Michigan:**  Michigan has not scheduled Oliceridine as a controlled substance.

**Minnesota:**  Minnesota has not scheduled Oliceridine as a controlled substance.

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

The methodology was to schedule Oliceridine 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:**

The proposed rule was posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

**Fiscal Estimate:**

The Fiscal Estimate and Economic Impact Analysis are 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:

Nilajah Hardin, 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 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received by January 14, 2022 to be included in the record of rulemaking proceedings.

TEXT OF RULE

SECTION 1. CSB 2.80 is created to read:

CSB 2.80 Scheduling of Oliceridine. Section 961.16 (3) (ta), Stats., is created to read:

961.16 (3) (ta) Oliceridine.

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 1/31/2022

Agency

Chairperson

Controlled Substances Board
ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
   ☑ Original  ☐ Updated  ☐ Corrected

2. Date
   November 19, 2021

3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)
   CSB 2.80

4. Subject
   Scheduling Oliceridine

5. Fund Sources Affected
   ☐ GPR  ☐ FED  ☐ PRO  ☐ PRS  ☐ SEG  ☐ SEG-S

6. Chapter 20, Stats. Appropriations Affected
   ☐

7. Fiscal Effect of Implementing the Rule
   ☑ No Fiscal Effect  ☐ Increase Existing Revenues  ☐ Decrease Costs
   ☐ Indeterminate  ☐ Decrease Existing Revenues  ☐ Could Absorb Within Agency's Budget

8. The Rule Will Impact the Following (Check All That Apply)
   ☐ State's Economy  ☐ Local Government Units  ☐ Specific Businesses/Sectors
   ☐ Public Utility Rate Payers  ☐ Small Businesses (if checked, complete Attachment A)

   $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)?
    ☐ Yes  ☑ No

11. Policy Problem Addressed by the Rule
    On October 30, 2020, the Department of Justice, Drug Enforcement Administration published its interim final rule in the Federal Register listing oliceridine into schedule II of the federal Controlled Substances Act.

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)
    None.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
    The benefit is that the federal and state controlled substances acts will be uniform to avoid confusion. In addition, it is in the best interest of Wisconsin citizens to schedule Oliceridine as a controlled substance.

16. Long Range Implications of Implementing the Rule
    The long range implication of implementing the rule will be to schedule Oliceridine as a schedule II controlled substance.

17. Compare With Approaches Being Used by Federal Government
    The federal government has scheduled Oliceridine 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 oliceridine as a controlled substance.
Iowa: Iowa has not scheduled oliceridine as a controlled substance.

Michigan: Michigan has not scheduled oliceridine as a controlled substance.

Minnesota: Minnesota has not scheduled oliceridine as a controlled substance.

<table>
<thead>
<tr>
<th>19. Contact Name</th>
<th>20. Contact Phone Number</th>
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</thead>
<tbody>
<tr>
<td>Nilajah Hardin, Administrative Rules Coordinator</td>
<td>608-267-7139</td>
</tr>
</tbody>
</table>

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


6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)
   - Yes
   - No