

**STATE OF WISCONSIN
CONTROLLED SUBSTANCES BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
CONTROLLED SUBSTANCES BOARD : CR 23-018**

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:

This rule adds thirty-five (35) anabolic steroids not previously scheduled in Wisconsin to schedule III under ch. 961, Stats.

The Controlled Substances Board did not receive an objection to similarly treating these thirty-five (35) anabolic steroids as schedule III under ch. 961, Stats. within 30 days of the date of publication in the federal register of the final order designating these thirty-five (35) anabolic steroids as controlled substances.

Therefore, pursuant to s. 961.11(4), Stats., the Controlled Substances Board by Affirmative Action similarly treated thirty-five (35) anabolic steroids under chapter 961, Stats and is now following up with a final rule.

The Affirmative Action order, dated July 20, 2022, took effect on July 25, 2022, when it was published in the Administrative Register and expires upon promulgation of a final rule.

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:

All of the 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 23-018)

PROPOSED ORDER

An order of the Controlled Substances Board to create CSB 2.92 relating to scheduling thirty-five (35) anabolic steroids.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 961.18, 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. 961.18, Stats.

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

On December 16, 2005 and July 30, 2012, the Department of Justice, Drug Enforcement Administration published its final rules in the Federal Register placing a number of anabolic steroids into schedule III of the federal Controlled Substances Act. The scheduling actions are effective January 20, 2005 and August 29, 2012. Of the substances scheduled in these actions, thirty-five (35) have been determined to not have been previously scheduled in Wisconsin.

Plain language analysis:

This rule adds thirty-five (35) anabolic steroids not previously scheduled in Wisconsin to schedule III under ch. 961, Stats.

The Controlled Substances Board did not receive an objection to similarly treating these thirty-five (35) anabolic steroids as schedule III under ch. 961, Stats. within 30 days of the date of publication in the federal register of the final order designating these thirty-five (35) anabolic steroids as controlled substances.

Therefore, pursuant to s. 961.11(4), Stats., the Controlled Substances Board by Affirmative Action similarly treated thirty-five (35) anabolic steroids under chapter 961, Stats and is now following up with a final rule.

The Affirmative Action order, dated July 20, 2022, took effect on July 25, 2022, when it was published 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 included the thirty-five (35) anabolic steroids added in this rule as schedule III controlled substances [720 Illinois Compiled Statutes 570/102 (c-1) and 208 (f)].

Iowa: Iowa has included the thirty-five (35) anabolic steroids added in this rule as schedule III controlled substances [Iowa Code 124.208 (6)].

Michigan: Michigan has not included the thirty-five (35) anabolic steroids added in this rule as schedule III controlled substances [Michigan Compiled Laws s. 333.7201-7231].

Minnesota: Minnesota has included the thirty-five (35) anabolic steroids added in this rule as schedule III controlled substances [Minnesota Statutes 152.02 (4) (f) (1)].

Summary of factual data and analytical methodologies:

The methodology was to add thirty-five (35) anabolic steroids to schedule III of ch. 961, Stats. 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 rule adds thirty-five (35) anabolic steroids as Schedule III controlled substances which will not have any effect on small business.

Fiscal Estimate:

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.

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 Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

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 July 14, 2023 to be included in the record of rulemaking proceedings.

TEXT OF RULE

SECTION 1. CSB 2.92 is created to read:

CSB 2.92 Addition of thirty-five (35) Anabolic Steroids to schedule III. Section 961.18 (7), Stats., is repealed and recreated to read:

961.18 (7) ANABOLIC STEROIDS. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of any of the following anabolic steroids, including any of their esters, ethers, isomers, esters or ethers of isomers, salts and salts of esters or ethers, isomers and esters or ethers of isomers that are theoretically possible within the specific chemical designation. Except such terms do not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this section:

(a) 3beta,17-dihydroxy-5alpha-androstane.

- (ag) 3alpha,17beta-dihydroxy-5alpha-androstane.
- (ar) 5alpha-androstan-3,17-dione.
- (b) 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene; 3alpha,17beta-dihydroxy-5alpha-androst-1-ene).
- (bg) 4-androstenediol.
- (br) 5-androstenediol.
- (c) 1-androstenedione.
- (cg) 4-androstenedione.
- (cr) 5-androstenedione.
- (d) Bolasterone.
- (dg) Boldenone.
- (dr) Boldione.
- (e) Calusterone.
- (eg) 4-chlorotestosterone, which is also called clostebol.
- (er) Dehydrochloromethyltestosterone.
- (f) Desoxymethyltestosterone.
- (fg) delta1-dihydrotestosterone.
- (fr) 4-dihydrotestosterone, which is also called stanolone.
- (g) Drostanolone.
- (gg) Ethylestrenol.
- (gr) Fluoxymesterone.
- (h) Formebolone, which is also called fromebolone.
- (hg) Furazabol.
- (hr) 13beta-ethyl-17beta-hydroxygon-4-en-3-one.
- (i) 4-hydroxytestosterone.
- (ig) 4-hydroxy-19-nortestosterone.
- (ir) Mestanolone.
- (j) Mesterolone.
- (jg) Methandienone, which is also called methandrostenolone.
- (jr) Methandriol.
- (k) Methasterone.
- (kg) Methenolone.
- (kr) 17alpha-methyl-3beta, 17beta-dihydroxy-5alpha-androstane.
- (L) 17alpha-methyl-3alpha,17beta-dihydroxy-5alpha-androstane.
- (Lg) 17alpha-methyl-3beta,17beta-dihydroxyandrost-4-ene.
- (Lr) 17alpha-methyl-4-hydroxynandrolone.
- (m) Methyldienolone.
- (mg) Methyltrienolone.
- (mr) Methyltestosterone.
- (n) Mibolerone.
- (ng) 17alpha-methyl-delta1-dihydrotestosterone, which is also called 17-alpha-methyl-1-testosterone.
- (nr) Nandrolone.
- (o) 19-nor-4-androstenediol (3beta, 17beta-dihydroxyestr-4-ene; 3alpha, 17beta-dihydroxyestr-4-ene).

- (og) 19-nor-5-androstenediol (3beta, 17beta-dihydroxyestr-5-ene; 3alpha, 17beta-dihydroxyestr-5-ene).
- (or) 19-nor-4,9(10)-androstadienedione.
- (p) 19-nor-4-androstenedione (estr-4-en-3,17-dione).
- (pg) 19-nor-5-androstenedione (estr-5-en-3,17-dione).
- (pr) Norbolethone.
- (q) Norclostebol.
- (qg) Norethandrolone.
- (qr) Normethandrolone.
- (r) Oxandrolone.
- (rg) Oxymesterone.
- (rr) Oxymetholone.
- (s) Prostanazol.
- (sg) Stanozolol.
- (sr) Stenbolone.
- (t) Testolactone.
- (tg) Testosterone.
- (tr) Tetrahydrogestrinone.
- (u) Trenbolone.

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 09/19/23

Agency *Douglas Englebert*
 Chairperson
 Controlled Substances Board

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 04/26/23
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) CSB 2.92	
4. Subject Scheduling 38 Anabolic Steroids	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected s. 20.165 (1) (g) and (hg)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" 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 checked="" 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 December 16, 2005 and July 30, 2012, the Department of Justice, Drug Enforcement Administration published its final rules in the Federal Register placing thirty-eight (38) anabolic steroids into schedule III of the federal Controlled Substances Act. The scheduling actions are effective January 20, 2005 and August 29, 2012.	
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 were poseted on the Department's website for 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.	
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) The rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole. The Department of Safety and Professional Services estimates a total of \$2,500 in one-time costs. These estimated costs may not be absorbed in the agency budget.	
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.	
16. Long Range Implications of Implementing the Rule The long range implications of implementing the rule are that 38 anabolic steroids will be added to Wis. Stat. ch. 961 as schedule III controlled substances.	
17. Compare With Approaches Being Used by Federal Government The federal government has scheduled these 38 anabolic steroids as schedule III controlled substances.	
18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)	

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

Illinois: Illinois has included the thirty-eight (38) anabolic steroids listed in this rule as schedule III controlled substances [720 Illinois Compiled Statutes 570/102 (c-1) and 208 (f)].

Iowa: Iowa has included the thirty-eight (38) anabolic steroids listed in this rule as schedule III controlled substances [Iowa Code 124.208 (6)].

Michigan: Michigan has not included the thirty-eight (38) anabolic steroids listed in this rule as schedule III controlled substances [Michigan Compiled Laws s. 333.7201-7231].

Minnesota: Minnesota has included the thirty-eight (38) anabolic steroids listed in this rule as schedule III controlled substances [Minnesota Statutes 152.02 (4) (f) (1)].

19. Contact Name

Nilajah Hardin, Administrative Rules Coordinator

20. Contact Phone Number

608-267-7139

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
-