

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 )  
-----

PROPOSED ORDER

An order of the Controlled Substances Board to create CSB 2.37 relating to rescheduling hydrocodone combination products.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

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

**Statutory authority:** s. 961.11 (2) and (4), Stats.

**Explanation of agency authority:**

**961.11 (2)** After considering the factors enumerated in sub. (1m), the controlled substances board shall make findings with respect to them and promulgate a rule controlling the substance upon finding that the substance has a potential for abuse.

**961.11 (4)** 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).

**Related statute or rule:**

**Plain language analysis:**

The Controlled Substances Board did not receive an objection to treating hydrocodone combination products as a schedule II instead of schedule III under ch. 961, Stats., based upon the federal scheduling. The Controlled Substances Board took affirmative action on October 7, 2014 to similarly treat hydrocodone combination products under chapter 961 effective November 1, 2014 to allow for publication in the Administrative Register. The Affirmative Action Order will expire upon promulgation of a final rule.

This rule repeals sections 961.18 (5) (c) and (d) which reschedules hydrocodone combination products from a schedule III to a schedule II.

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

On August 22, 2014, the United States Food and Drug Administration, Drug Enforcement Administration published its final rule in the Federal Register rescheduling hydrocodone combination products from a schedule III to a schedule II of the federal Controlled Substances Act. The scheduling action was effective October 6, 2014.

**Comparison with rules in adjacent states:**

**Illinois:** Illinois has not rescheduled hydrocodone combination products.

**Iowa:** Iowa is in the process of promulgating an administrative rule to amend the Iowa statutes to reschedule hydrocodone combination products from schedule III to schedule II.

**Michigan:** Michigan has not rescheduled hydrocodone combination products.

**Minnesota:** Minnesota has not rescheduled hydrocodone combination products.

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

The methodology was to reschedule hydrocodone combination products 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:**

None.

**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 Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

**Agency contact person:**

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Sharon.Henes@wisconsin.gov. Comments must be received on or before February 16, 2015 to be included in the record of rule-making proceedings.

-----  
TEXT OF RULE

SECTION 1. CSB 2.36 is created to read:

**CSB 2.37 Rescheduling of hydrocodone combination products.** Section 961.18(5)(c) and (d), Stats. are repealed.

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)  
-----