

Clearinghouse Rule 22-040

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 2.90, relating to transferring 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile, immediate precursors to phencyclidine, also known as PCP.

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:

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 May 17, 1978, the Department of Justice, Drug Enforcement Administration published its final rule in the Federal Register listing 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile, immediate precursors to phencyclidine, also known as PCP, into schedule II of the federal Controlled Substances Act. The scheduling action was effective June 16, 1978.

Plain language analysis:

This rule transfers 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile, immediate precursors to phencyclidine, also known as PCP, from schedule I to schedule II of the chapter 961, stats.

The Controlled Substances Board did not receive an objection to similarly listing 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile, immediate precursors to phencyclidine, also known as PCP, as schedule II controlled substances under ch. 961, Stats. within 30 days of the date of publication in the federal register of the final order listing 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile, immediate precursors to phencyclidine, also known as PCP, as a schedule II controlled substances.

Pursuant to s. 961.11(4), Stats., the Controlled Substances Board by affirmative action similarly treats 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile, immediate precursors to phencyclidine, also known as PCP, under chapter 961, Stats. by repealing s. 961.14 (6) and creating the following:

CSB 2.90 Transfer of 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile, immediate precursors to phencyclidine, also known as PCP, from Schedule I to schedule II. Section 961.16 (8) (c), Stats. is created to read:

961.16 (8) (c) Immediate precursors to phencyclidine, also known as PCP:

- 1. 1-phenylcyclohexylamine.***
- 2. 1-piperidinocyclohexanecarbonitrile.***

The Affirmative Action order, dated July 9, 2021, took effect on July 19, 2021, 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 listed 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile as a schedule II controlled substances [720 Illinois Compiled Statutes 520/206 (f) (2)].

Iowa: Iowa has listed 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile as a schedule II controlled substances [Iowa Administrative Code 124.206 (6) (b)].

Michigan: Michigan has not scheduled 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile as controlled substances.

Minnesota: Minnesota has listed 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile as a schedule II controlled substances [Minnesota Statutes 152.02 (3) (e) (6)].

Summary of factual data and analytical methodologies:

The methodology was to transfer 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile, immediate precursors to phencyclidine, also known as PCP, from schedule I to schedule II 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 rules were 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 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:

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 15, 2022 to be included in the record of rulemaking proceedings.

TEXT OF RULE

SECTION 1. s. 961.14 (6), stats. is repealed.

SECTION 2. CSB 2.90 is created to read:

CSB 2.90 Transfer of 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile, immediate precursors to phencyclidine, also known as PCP, from Schedule I to schedule II.
Section 961.16 (8) (c), Stats. is created to read:

961.16 (8) (c) Immediate precursors to phencyclidine, also known as PCP:

1. 1-phenylcyclohexylamine.
2. 1-piperidinocyclohexanecarbonitrile.

SECTION 3. 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)
