

# STATEMENT OF SCOPE

## CONTROLLED SUBSTANCES BOARD

Rule No.: CSB 2

Relating to: Additions to schedules in chapter 961

Rule Type: Both Permanent and Emergency

### 1. Finding/nature of emergency (Emergency Rule only):

The Waupaca County District Attorney's office has provided the Controlled Substances Board with information relevant to emergency scheduling and the commencement of a prosecution concerning a controlled substance analog pursuant to s. 961.25, Stats. Furanyl Fentanyl is an analog of the controlled substance schedule II drug, Fentanyl.

The Controlled Substances Board finds that scheduling of furanyl fentanyl on an emergency basis is necessary to avoid an imminent hazard to the public safety. The substances are not included in any other schedule and no exemption or approval is in effect for the substance under 21 USC 355.

The Controlled Substances Board considered the following factors in making the finding of an imminent hazard to the public safety: the history and current pattern of abuse; the scope, duration and significance of abuse; and the risk to the public health.

### 2. Detailed description of the objective of the proposed rule:

The objective is to schedule furanyl fentanyl (*N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide) as a Schedule I controlled substance.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Currently Wisconsin has not scheduled furanyl fentanyl as a Schedule I controlled substance. Furanyl fentanyl is a synthetic opioid. Last fall China banned other analogs of fentanyl resulting in the development of a new analog, furanyl fentanyl. Furanyl fentanyl is more potent than morphine and heroin. It is sold in pill form as well as being added to heroin. Deadly overdoses have been reported due to furanyl fentanyl. There are documented cases of furanyl fentanyl being used in the state of Wisconsin.

The Drug Enforcement Administration issued a nationwide alert on fentanyl as a threat to health and public safety on March 18, 2015. The Centers for Disease Control and Prevention issued an official health advisory on fentanyl-related overdose fatalities on October 26, 2015.

### 4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

**961.11 (1)** 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.

**961.11(4m)** The controlled substances board, by rule and without regard to the requirements of sub. (1m), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the

public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (1m) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a rule-making proceeding under subs. (1), (1m), (1r) and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (1), (1m), (1r) and (2) with respect to the substance.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

100 hours

**6. List with description of all entities that may be affected by the proposed rule:**

Law enforcement, district attorney offices, Dept of Justice, state courts and the Controlled Substances Board

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

Furanyl fentanyl is not currently scheduled under the Controlled Substances Act. The U.S. Department of Justice Drug Enforcement Administration in May 2016 scheduled two different fentanyl analogs.

**8. Anticipated economic impact of implementing the rule:**

Minimal to none

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Chair Signature

7-13-16

Date Submitted