If you need special accommodations due to a disability, please contact Kathleen Davies at least 7 days before the hearing.

Streaming Webcast of the Public Hearing: This public hearing will also be webcast for those unable to attend in person. To join the hearing via the webcast, please go to https://collaboration.fda.gov/opsc.

If you have never attended a Connect Pro event before, test your connection at https://collaboration.fda.gov/common/help/en/support/meeting_test.htm. To get a quick overview of the Connect Pro program, visit https://www.adobe.com/go/connectpro_overview. FDA has verified the website addresses in this document, as of the date this document was published in the Federal Register, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public hearing is available, it will be accessible at https://www.regulations.gov. It may be viewed at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

IV. Notice of Public Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, accompanied by FDA senior management from the Office of the Commissioner and the relevant centers/offices. Under § 15.30(f) (21 CFR 15.30(f)), the hearing is informal and the rules of evidence do not apply. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation (§ 15.30(e)). Public hearings under part 15 are subject to FDA’s policy and procedures for electronic media coverage of FDA’s public administrative proceedings (21 CFR part 10, subpart C) (§ 10.203(a)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA’s public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b) (see section V). To the extent that the conditions for the hearing as described in this document conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

Leslie Kux,  
Associate Commissioner for Policy.

In the Federal Register, Vol. 82, No. 238 / Wednesday, December 13, 2017 / Proposed Rules  
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DEPARTMENT OF JUSTICE  
Drug Enforcement Administration  
21 CFR Part 1308  
[Docket No. DEA–475]

Schedules of Controlled Substances: Temporary Placement of Seven Fentanyl-Related Substances in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Proposed amendment; notification of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to publish a temporary order to schedule seven fentanyl-related substances in schedule I. These seven substances are: [1-phenethylpiperdin-4-yl]N-phenylpentanamide (valery fentanyl), N-(4-fluorophenyl)-N-(1-phenethylpiperdin-4-yl)butyramide (para-fluorobutyryl fentanyl), N-(4-methoxyphenyl)-N-(1-phenethylpiperdin-4-yl)butyramide (para-methoxybutyryl fentanyl), N-(4-chlorophenyl)-N-(1-phenethylpiperdin-4-yl)isobutyramide (para-chloroisobutyryl fentanyl), N-(1-phenethylpiperdin-4-yl)phenylisobutyramide (isobutyryl fentanyl), and N-phenylcyclopentanone carboxamide (cyclopentyl fentanyl), and N-(2-fluoroethyl)-2-methoxy-N-(1-phenethylpiperdin-4-yl)acetamide (ocfentanyl). This action is based on a finding by the Administrator that the placement of these seven synthetic opioids in schedule I of the Controlled Substances Act (CSA) is necessary to avoid an imminent hazard to the public safety. When it is issued, the temporary scheduling order will be published in the Federal Register.


ADDRESSES: The DEA’s three-factor analysis is available in its entirety under “Supporting and Related Material” of the public docket for this action at www.regulations.gov under Docket Number DEA–475.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: This notice of intent contained in this document is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary scheduling order (in the form of a temporary amendment) to add valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclopentyl fentanyl, and ocfentanil to schedule I of the Controlled Substances Act. The temporary scheduling order will be published in the Federal Register, but will not be issued before January 12, 2018.

Legal Authority

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Though DEA has used the term “final order” with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a “temporary scheduling order.” No substantive change is intended.
Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA. The Administrator transmitted notice of his intent to place valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclopropyl fentanyl, and ocfentanil in schedule I on a temporary basis to the Assistant Secretary for Health of HHS by letter dated October 20, 2017. The Assistant Secretary responded to this notice of intent by letter dated November 8, 2017 and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclopropyl fentanyl and ocfentanil. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of these seven substances in schedule I of the CSA. Valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclopropyl fentanyl, and ocfentanil are not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for these seven substances under section 505 of the FDCA, 21 U.S.C. 355.

To find that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance’s history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

The recent identification of valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclopropyl fentanyl, and ocfentanil in forensic evidence indicates that these substances are being misused and abused. No approved medical use has been identified for these seven substances, nor have they been approved by the FDA for human consumption.

Available data and information for valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclopropyl fentanyl, and ocfentanil. The DEA’s three-factor analysis is available in its entirety under “Supporting and Related Material” of the public docket for this action at www.regulations.gov under Docket Number DEA–475.

Factor 4. History and Current Pattern of Abuse

The recreational abuse of fentanyl-related substances continues to be a significant concern. These substances are distributed to users, often with unpredictable outcomes. Evidence suggests that the pattern of abuse of these fentanyl-related substances parallels that of heroin and prescription opioid analogs. Valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclopropyl fentanyl, and ocfentanil are fentanyl-related substances that have been encountered by law enforcement and/or reported in the scientific literature by public health officials. Adverse health effects and outcomes related to the abuse of fentanyl-related substances have been documented in previous temporary scheduling actions (see DEA 3-Factor Analysis).

On October 1, 2014, the DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the

The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

2 As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary’s scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

2 Data are still being collected for July 2017–October 2017 due to the normal lag period for labs reporting to NFLIS.
fentanyl-related substances obtain these substances through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate (i.e., use a drug for the first time) abuse of these substances are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analogues (e.g., fentanyl, morphine).

**Factor 6. What, if Any, Risk There Is to the Public Health**

With no legitimate medical use, valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclo pentyl fentanyl, and ofen cantil have emerged on the illicit drug market. Substances within this chemical structural class have demonstrated pharmacological profiles similar to that of fentanyl and other ∝-opioid receptor agonists (see DEA 3-Factor Analysis). The abuse of these fentanyl-related substances poses significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analogues, such as morphine and oxycodone. The toxic effects of substances within this structural class in humans are demonstrated by overdose fatalities described in previous scheduling actions.

Based on information received by the DEA, the misuse and abuse of valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclo pentyl fentanyl, and ofen cantil lead to, at least, the same qualitative public health risks as heroin, fentanyl and other opioid analogues substances. As with any non-medically approved opioid, the health and safety risks for users are high. The public health risks attendant to the abuse of heroin and opioid analogues is well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

**Finding of Necessity of Schedule I Placement To Avoid an Imminent Hazard to the Public Safety**

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information, summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclo pentyl fentanyl, and ofen cantil in schedule I to avoid an imminent hazard to the public safety, the temporary order scheduling these substances will be effective on the date that order is published in the Federal Register, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Administrator to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this notice. Upon publication of the temporary order, valeryl fentanyl, para-fluorobutyryl fentanyl, para-methoxybutyryl fentanyl, para-chloroisobutyryl fentanyl, isobutyryl fentanyl, cyclo pentyl fentanyl, and ofen cantil will be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession of a schedule I controlled substance.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done “on the record after opportunity for a hearing” conducted pursuant to the provisions of 5 U.S.C. 556 and 557, 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review, 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

**Regulatory Matters**

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the expiration of a notice in the Federal Register of the intention to issue such order and the grounds upon which such
order that is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator took into consideration comments submitted by the Assistant Secretary in response to notice that DEA transmitted to the Assistant Secretary pursuant to section 811(h)(4).

Further, the DEA believes that this temporary scheduling action is not a “rule” as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

§ 1308.11 Schedule I.

* * * * *

(h) * * * * *

(23) N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide, its isomers, esters, ethers, salts and salts of isomers, esters and other substances (Other name: valeryl fentanyl) . . . (9804)

(24) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide, its isomers, esters, ethers, salts and salts of isomers, esters and other substances (Other name: para-fluorobutyryl fentanyl) . . . (9823)

(25) N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide, its isomers, esters, ethers, salts and salts of isomers, esters and other substances (Other name: para-methoxybutyryl fentanyl) . . . (9837)

(26) N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and other substances (Other name: para-chloroisobutyryl fentanyl) . . . (9826)

(27) N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and other substances (Other name: isobutyryl fentanyl) . . . (9827)

(28) N-(1-phenethylpiperidin-4-yl)-N-phenylacetylcarboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and other substances (Other name: cyclopentyl fentanyl) . . . (9847)

(29) N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide, its isomers, esters, ethers, salts and salts of isomers, esters and other substances (Other name: cfenfentanil) . . . (9832)

Dated: December 5, 2017.

Robert W. Patterson, Acting Administrator.