DAVID Y. IGE
GOVERNOR

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

December 28, 2020

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirty-first State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of the
House of Representatives
Thirty-first State Legislature
State Capitol, Room 431
Honolulu, HI 96813

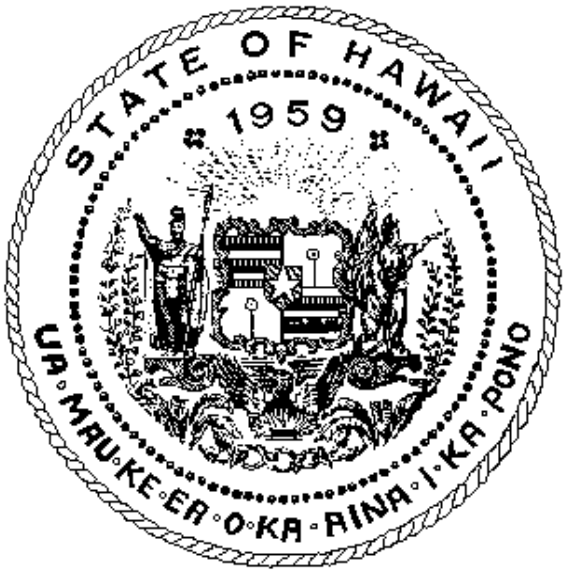
Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the **Narcotics Enforcement Division 2020 Annual Report**, as required by Section 329-11, Hawaii Revised Statutes. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at: https://dps.hawaii.gov/wp-content/uploads/2020/12/Narcotics Enforcement Division 2020 Annual Report.pdf.

Sincerely,

Max N. Otani
Director

Enclosure



DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2021 LEGISLATURE

NARCOTICS ENFORCEMENT DIVISION
2020 ANNUAL REPORT

December 2020

NARCOTICS ENFORCEMENT DIVISION
ANNUAL REPORT TO THE 2021 LEGISLATURE
SECTION 329-11, HRS, REPORTING REQUIREMENTS

NOTICE OF FEDERAL SCHEDULING ACTIONS

Chapter 329-11(d) of the Hawaii Revised Statutes ("HRS") states that if a substance is added, deleted or rescheduled under federal law and notice of the designation is given to the Department of Public Safety, then the Department of Public Safety shall recommend to the legislature that a corresponding change in Hawaii law be made. The Department of Public Safety shall similarly designate the substance as added, deleted, or rescheduled under this chapter, after the expiration of thirty days from publication in the Federal Register of a final order, and this change shall have the effect of law. If a substance is added, deleted, or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the state legislature has not made the corresponding changes in this chapter, the temporary designation of the added, deleted, or rescheduled substance shall be nullified.

Temporary Changes to Schedule I

On October 25, 2019, The Department of Public Safety was given notice via publication in the Federal Register of a final order[1] that the following substances, were placed into Schedule I by the United States Drug Enforcement Administration ("DEA"):

> **Cyclopropyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide;**
>
> **Methoxyacetyl fentanyl (2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);**
>
> ***ortho*-Fluorofentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide); other name: 2-fluorofentanyl); and**
>
> ***para*-Fluorobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide).**

This federal scheduling action imposes the regulatory controls and the administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional

[1] The final order was published in volume 84, number 207 of the Federal Register on October 25, 2019.

activities with, or possess) or propose to handle the drug products listed above. The DEA placed an effective date of October 25, 2019 on this scheduling action.

In accordance with chapter 329-11(d) of the HRS, the Department of Public Safety temporarily added the aforementioned drug product listed above into Schedule I in chapter 329-14 (b) of the HRS. This temporary addition imposes the regulatory controls and the administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities with, or possess) or propose to handle the aforementioned drug products listed above in the State of Hawaii.

Temporary Changes to Schedule II

On April 17, 2020, The Department of Public Safety was given notice via publication in the Federal Register of a final order[2] that the following substance, were placed into Schedule II by the United States Drug Enforcement Administration ("DEA"):

N-phenyl-N-(piperidin-4-yl)propionamide (norfentanyl)

This federal scheduling action imposes the regulatory controls and the administrative, civil, and criminal sanctions applicable to schedule II controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities with, or possess) or propose to handle the drug products listed above. The DEA placed an effective date of May 18, 2020 on this scheduling action.

In accordance with chapter 329-11(d) of the HRS, the Department of Public Safety temporarily added the aforementioned drug product listed above into Schedule II in chapter 329-16 (f) of the HRS. This temporary addition imposes the regulatory controls and the administrative, civil, and criminal sanctions applicable to schedule II controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities with, or possess) or propose to handle the aforementioned drug products listed above in the State of Hawaii.

[2] The final order was published in volume 85, number 75 of the Federal Register on April 17, 2020.

Temporary Changes to Schedule IV

On January 24, 2020, the Department of Public Safety was given notice via publication in the Federal Register of a final order[3] that the following substance was placed into Schedule IV by the DEA:

Brexanolone

This federal scheduling action imposes the regulatory controls and the administrative, civil, and criminal sanctions applicable to schedule IV controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities with, or possess) or propose to handle the drug products listed above. The DEA placed an effective date of January 24, 2020 on this scheduling action.

On January 7, 2020, The Department of Public Safety was given notice via publication in the Federal Register of a final order[4] that the following substance was placed into Schedule IV by the United States Drug Enforcement Administration ("DEA"):

Solriamfetol (including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible)

This federal scheduling action imposes the regulatory controls and the administrative, civil, and criminal sanctions applicable to schedule IV controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities with, or possess) or propose to handle the drug products listed above. The DEA placed an effective date of January 7, 2020 on this scheduling action.

In accordance with chapter 329-11(d) of the HRS, the Department of Public Safety temporarily added the aforementioned drug product listed above into Schedule IV in chapter 329-20 (d) of the HRS. This temporary addition imposes the regulatory controls and the administrative, civil, and criminal sanctions applicable to schedule II controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities with, or possess) or propose to handle the aforementioned drug products listed above in the State of Hawaii.

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[3] The final order was published in volume 85, number 16 of the Federal Register on January 24, 2020.

[4] The final order was published in volume 85, number 4 of the Federal Register on January 7, 2020.

Temporary Changes to Schedule V:

On August 28, 2020, the Department of Public Safety was given notice via publication in the Federal Register of an interim final order[5] that the following substance was deleted from Schedule V by the DEA:

Drug products in finished dosage formulations that have been approved by FDA and that contain cannabidiol (CBD) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols

This federal scheduling action removes the regulatory controls and the administrative, civil, and criminal sanctions applicable to schedule V controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities with, or possess) or propose to handle the drug products listed above. The DEA placed an effective date of August 21, 2020 on this scheduling action[i].

In accordance with chapter 329-11(d) of the HRS, the Department of Public Safety is temporarily deleting the aforementioned drug product listed above from Schedule V in chapter 329-22 (e) of the HRS. This temporary deletion removes the regulatory controls and the administrative, civil, and criminal sanctions applicable to schedule V controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities with, or possess) or propose to handle the aforementioned drug products listed above in the State of Hawaii.

For clarity purposes, this temporary change specifically applies to the FDA approved prescription drug Epidiolex and any generic versions of that drug that are FDA approved and contain cannabidiol (CBD) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols only. **This temporary change should not be construed to change the legal status of cannabis, marijuana, tetrahydrocannabinols, and other marijuana related constituents, except for the narrow application to the "Approved cannabidiol drugs" listed in this report. Furthermore, unless further notice is given, the controls under federal and state law pertaining to prescription drugs continue to apply to Epidiolex and any generic versions of that drug that are FDA approved and contain cannabidiol (CBD) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.**

[5] The final order was published in volume 85, number 163 of the Federal Register on August 21, 2020.

EMERGENCY CONTROLLED SUBSTANCE SCHEDULING ACTION

Section 329-11(e) of the Hawaii Revised Statutes authorizes the Administrator of the Department of Public Safety, Narcotics Enforcement Division (NED), to make an emergency scheduling by placing a substance into schedules I, II, action is necessary to avoid an imminent hazard or the possibility of an imminent hazard to the health and safety of the public. The Department shall post a public notice thirty days prior to the effective date of the emergency scheduling action, at the State Capitol, in the Office of the Lieutenant Governor, and on the Department's website for public inspection. If a substance is added or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the State Legislature has not enacted the corresponding changes in this chapter, the temporary designation of the added or rescheduled substance shall be nullified.

1) **Etizolam**
2) **Flualprazolam**

Etizolam is a thienodiazepine and Flualprazolam is a triazolo-benzodiazepine. Both are chemically related to a class of substances known as benzodiazepines. Benzodiazepines produce central nervous system (CNS) depression and are commonly used to treat insomnia and anxiety.

Both Etizolam and Flualprazolam are usually encountered in powder or in tablet form. Etizolam has also been encountered spiked onto blotter paper.

Flualprazolam has known pharmacological effects similar to Alprazolam (brand names: Xanax and Niravam), a controlled substance in the United States. Flualprazolam is considered a ‘novel’ or ‘designer’ benzodiazepine and was first patented in the 1970’s but was never marketed. Pharmacological data demonstrates that Flualprazolam has a greater potency than alprazolam with relatively short onset of action. Flualprazolam has been associated with at least 44 postmortem (PM) death investigations and driving under the influence of drugs investigations in the United States in between June and December 2019.

Etizolam has pharmacological effects similar to diazepam (brand name Valium) with 6-10 times greater hypnotic effects. Etizolam was found to have contributed to 548 overdose deaths in Scotland in 2018.

Both Etizolam and Flualprazolam have been sold over the internet a ‘research chemical’ with discussions on online forums indicating that some people consume these substances for its psychoactive benzodiazepine sedative -type effects. The National Institute of Health reports that 30% of all overdoses involving opioids also involve a benzodiazepine. Etizolam was introduced in 1983 in Japan as treatment for neurological conditions such as anxiety and sleep disorders, it is legally marketed in Japan, Italy and India. However, both Etizolam and Flualprazolam are not approved for medical use in the U.S.

Both are not controlled under the U.S. Controlled Substance Act, but several states have emergency scheduled and/or legislatively controlled these substances because of their illicit use and potential for abuse. Etizolam is scheduled in several states including Alabama, Arkansas, Georgia, Kansas, Louisiana, Mississippi, and Virginia. Flualprazolam has been scheduled in Louisiana and Virginia.

In Hawaii, there have been multiple law enforcement seizures from illicit drug investigations that have been confirmed by forensic laboratories to contain Etizolam or Flualprazolam.

The NED is not aware of any currently accepted medical uses for Etizolam or Flualprazolam in the United States.

The Administrator of the NED has reviewed reference material and literature related to the emergency scheduling of this substance. The Administrator has determined that due to reports of its international abuse, associated fatalities and its discovery in Hawaii, that placing Etizolam and Flualprazolam into schedule I of the Hawaii Revised Statutes is necessary to avoid an imminent hazard or the possibility of an imminent hazard to the health and safety of the public.

Consequently, in accordance with provisions set forth in Section 329-11(e) of the Hawaii Revised Statutes, the Administrator of the Narcotics Enforcement Division is emergency scheduling Etizolam and Flualprazolam, including its optical, positional, and geometric isomers, salts and salts of isomers, where possible.

This emergency controlled substance scheduling began on November 15, 2020, after required posting of notice, as required under Section 329-11(e) Hawaii Revised Statutes.

RECOMMENDED CHANGES TO STATUTE:

In accordance with sections 329-11 (d) and (e) of the HRS, the Department of Public Safety is recommending the following changes to state law in order to avoid the nullification of the temporary changes that have been made:

Schedule I:

Section 329-14 of the HRS is recommended to be amended by adding subsection (b) to read as follows:

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(67) Cyclopropyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide;

(68) Methoxyacetyl fentanyl (2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide);

(69) *ortho*-Fluorofentanyl (*N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide); other name: 2-fluorofentanyl); and

(70) *para*-Fluorobutyryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide).

Section 329-14, Hawaii Revised Statutes, is recommended to be amended by amending subsection (e) to read as follows:

(e) Depressants. Unless specifically excepted, the schedule shall include any material, compound, mixture, or preparation which contains any quantity of the substance:

(1) Mecloqualone; or

(2) Methaqualone;

(3) Etizolam (including its optical, positional, and geometric isomers, salts and salts of isomers, where possible); and

(4) Flualprazolam (including its optical, positional, and geometric isomers, salts and salts of isomers, where possible).

Schedule II:

Chapter 329-16 of the HRS is recommended to be amended by adding subsection (b) to read as follows:

(f) Immediate precursor. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(3) Immediate precursor to Fentanyl:

(A) 4-anilino-N-phenethyl-4-piperidine (ANPP); and

(B) *N*-phenyl-*N*-(piperidin-4-yl)propionamide (norfentanyl).

Schedule IV:

Section 329-20 of the HRS is recommended to be amended by adding subsection (b) to read as follows:

(b) Depressants. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, esters, ethers, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, that has a degree of danger or probable danger associated with a depressant effect on the central nervous system:

(56) Brexanolone

Section 329-20 of the HRS is recommended to be amended by adding subsection (d) to read as follows:

(d) Stimulants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(14) Solriamfetol (2-amino-3-phenylpropyl carbamate), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible.

Schedule V:

329-22 of the HRS is recommended to be amended by deleting subsection (e) to read as follows:

[i] Normally, the DEA uses their internal federal rulemaking process to amend the controlled substances schedules in federal law. At the conclusion of the federal rulemaking process, the DEA issues a "final order" or a "final rule" and publishes that final order or rule in the Federal Register. In this case, the Congress enacted a federal law known as the Agriculture Improvement Act of 2018. Among the contents of the new law was a statutory change that removed the "approved cannabidiol drugs" listed above from the federal drug schedules. Consequently, because the changes in the new federal law supersede the DEA's normal rulemaking process, the DEA said in its interim final order that changes to the federal drugs schedules have already occurred. As such, the requirement to make a temporary corresponding change to Hawaii law as required in section 329-11(d) is satisfied by the DEA's interim final order and prompts issuance of PSD's notice.