

12.5 miles northeast of the airport, and within a 6.5-mile radius of Ohio State University Airport, and within a 7.4-mile radius of Bolton Field Airport, and within a 7-mile radius of Fairfield County Airport, and within a 6.5-mile radius of Darby Dan Airport, excluding that airspace within the London, OH, Class E airspace area.

* * * * *

AGL OH E5 Defiance, OH [Amended]

Defiance Memorial Airport, OH
(Lat. 41°20'15" N., long. 84°25'44" W.)
Defiance Regional Medical Center Heliport,
OH, Point in Space Coordinates
(Lat. 41°17'53" N., long. 84°22'40" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Defiance Memorial Airport, and within a 6-mile radius of the Point in Space serving Defiance Regional Medical Center Heliport.

* * * * *

AGL OH E5 Findlay, OH [Amended]

Findlay Airport, OH
(Lat. 41°00'43" N., long. 83°40'07" W.)
Bluffton Airport, OH
(Lat. 40°53'08" N., long. 83°52'07" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Findlay Airport and within a 7.2-mile radius of Bluffton Airport.

* * * * *

AGL OH E5 Hamilton, OH [Amended]

Butler County Regional Airport-Hogan Field,
OH
(Lat. 39°21'50" N., long. 84°31'19" W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Butler County Regional Airport-Hogan Field.

* * * * *

AGL OH E5 Lima, OH [Amended]

Lima Allen County Airport, OH
(Lat. 40°42'27" N., long. 84°01'37" W.)
St. Rita's Medical Center Heliport, OH, Point
in Space Coordinates
(Lat. 40°44'26" N., long. 84°07'06" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Lima Allen County Airport, and within a 6-mile radius of the Point in Space serving St. Rita's Medical Center Heliport, excluding the airspace within the Findlay, OH, Class E airspace area.

AGL OH E5 London, OH [Amended]

Madison County Airport, OH
(Lat. 39°55'58" N., long. 83°27'43" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Madison County Airport.

Issued in Fort Worth, Texas, on September 19, 2016.

Walter Tweedy,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2016-23113 Filed 9-26-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-448]

**Schedules of Controlled Substances:
Temporary Placement of Furanyl
Fentanyl Into Schedule I**

AGENCY: Drug Enforcement
Administration, Department of Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to temporarily schedule the synthetic opioid, *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylfuran-2-carboxamide (furanyl fentanyl), into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of this synthetic opioid into schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. Any final order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to schedule I controlled substances under the Controlled Substances Act on the manufacture, distribution, possession, importation, exportation, research, and conduct of, instructional activities of this synthetic opioid.

DATES: September 27, 2016.

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

SUPPLEMENTARY INFORMATION: Any final order will be published in the **Federal Register** and may not be effective prior to October 27, 2016.

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801-971. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, and are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II.

The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if she finds that such action is necessary to avoid 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). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

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 into schedule I of the CSA.¹ The

¹ 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.

Administrator transmitted notice of his intent to place furanyl fentanyl in schedule I on a temporary basis to the Assistant Secretary by letter dated June 22, 2016. The Assistant Secretary responded to this notice by letter dated July 8, 2016, and advised that based on review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for furanyl fentanyl. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of furanyl fentanyl into schedule I of the CSA. Furanyl fentanyl is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for furanyl fentanyl under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of furanyl fentanyl in schedule I on a temporary basis is necessary to avoid an imminent hazard to public safety.

To find that placing a substance temporarily into 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 section 201(c) of the CSA, 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).

Furanyl Fentanyl

Furanyl fentanyl was first described in 1986 in the patent literature. The scientific literature reported overdose events involving furanyl fentanyl, among other fentanyl analogues in 2015 in Sweden. No approved medical use has been identified for furanyl fentanyl, nor has it been approved by the FDA for human consumption. The recent identification of furanyl fentanyl in drug evidence and the identification of this substance in association with fatal overdose events indicate that this substance is being abused for its morphine-like properties.

Available data and information for furanyl fentanyl, summarized below, indicate that this synthetic opioid has 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. The DEA's three-factor analysis is available in its entirety under the public docket of this action as a supporting document at www.regulations.gov under Docket Number DEA-448.

Factor 4. History and Current Pattern of Abuse

On October 1, 2014, the DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are repositied in STARLiMS; data from STRIDE and STARLiMS were queried on July 11, 2016. STARLiMS registered 36 reports containing furanyl fentanyl, all reported in 2016, from California, Connecticut, Florida, Georgia, Maryland, Montana, New Jersey, New York, North Carolina, North Dakota, Tennessee, Utah, West Virginia, and the District of Columbia. The DEA is not aware of any laboratory identifications of furanyl fentanyl prior to 2015.

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by other federal, state and local forensic laboratories across the country. According to NFLIS, the first report of furanyl fentanyl at other federal, state, or local forensic laboratories was recorded in January 2016 in Ohio. From January through May 2016, a total of 80 submissions involving furanyl fentanyl were reported in NFLIS as a result of law enforcement encounters in Iowa, New Jersey, North Dakota, Ohio, and Wisconsin (query date: July 11, 2016).

Evidence suggests that the pattern of abuse of fentanyl analogues, including furanyl fentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of furanyl fentanyl have been encountered in powder form. Furanyl fentanyl has also been encountered in drug paraphernalia commonly associated with heroin or other opioid abuse including glassine bags, and as a residue on spoons and bottle caps. Furanyl fentanyl has been encountered as a single substance as well as in combination with other substances of

abuse, including heroin, fentanyl, butyryl fentanyl, and U-47700. Furanyl fentanyl has caused fatal overdoses, in which intravenous routes of administration are documented.

Factor 5. Scope, Duration and Significance of Abuse

The DEA is currently aware of at least 128 confirmed fatalities associated with furanyl fentanyl. The information on these deaths occurring in 2015 and 2016 was collected from personal communications or toxicology and medical examiner reports received by the DEA. These deaths were reported from five states—Illinois (36), Maryland (41), New Jersey (1), North Carolina (49), and Ohio (1). STARLiMS and NFLIS have a total of 116 drug reports in which furanyl fentanyl was identified in drug exhibits submitted to forensic laboratories in 2016 from law enforcement encounters in California, Connecticut, Florida, Georgia, Iowa, Maryland, Montana, New Jersey, New York, North Carolina, North Dakota, Ohio, Tennessee, Utah, West Virginia, Wisconsin, and the District of Columbia. It is likely that the prevalence of furanyl fentanyl in opioid analgesic-related emergency room admissions and deaths is underreported as standard immunoassays may not differentiate this substance from fentanyl.

The population likely to abuse furanyl fentanyl overlaps with the population abusing prescription opioid analgesics and heroin. This is evidenced by the routes of drug administration and drug use history documented in furanyl fentanyl fatal overdose cases. Because abusers of furanyl fentanyl are likely to obtain this substance 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 an illicit drug for the first time) furanyl fentanyl abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.*, fentanyl, morphine, etc.).

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

Furanyl fentanyl exhibits pharmacological profiles similar to that of fentanyl and other μ -opioid receptor agonists. The toxic effects of furanyl fentanyl in humans are demonstrated by overdose fatalities involving this substance. Abusers of furanyl fentanyl may not know the origin, identity, or purity of this substance, thus posing significant adverse health risks when compared to abuse of pharmaceutical

preparations of opioid analgesics, such as morphine and oxycodone.

Based on the documented case reports of overdose fatalities, the abuse of furanyl fentanyl leads to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic substances. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

Furanyl fentanyl has been associated with numerous fatalities. At least 128 confirmed overdose deaths involving furanyl fentanyl abuse have been reported throughout Illinois (36), Maryland (41), New Jersey (1), North Carolina (49), and Ohio (1) between 2015 and 2016.

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

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information, summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of furanyl fentanyl poses an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for furanyl fentanyl in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1) may only be placed in schedule I. 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. Available data and information for furanyl fentanyl indicate that this substance has 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. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated June 22, 2016, notified the Assistant Secretary of the DEA's intention to temporarily place this substance in schedule I.

Conclusion

This notice of intent initiates an expedited temporary scheduling action and provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h). In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and

information, herein set forth the grounds for his determination that it is necessary to temporarily schedule furanyl fentanyl in schedule I of the CSA, and finds that placement of this synthetic opioid substance into schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety.

Because the Administrator hereby finds that it is necessary to temporarily place furanyl fentanyl into schedule I to avoid an imminent hazard to the public safety, any subsequent final order temporarily scheduling this substance will be effective on the date of publication 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 scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Administrator to issue such a final order as soon as possible after the expiration of 30 days from the date of publication of this notice. Furanyl fentanyl will then 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 an expedited 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 publication of a notice in the **Federal Register** of the intention

to issue such order and the grounds upon which such order 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 will take into consideration any comments submitted by the Assistant Secretary with regard to the proposed temporary scheduling order.

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 (OMB).

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

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(21) to read as follows:

§ 1308.11 Schedule I

* * * * *

(h) * * *

(21) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylfuran-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: Furanyl fentanyl) . . . (9834).

Dated: September 15, 2016.

Chuck Rosenberg,
Acting Administrator.

[FR Doc. 2016-23183 Filed 9-26-16; 8:45 am]

BILLING CODE 4410-09-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 212

Freedom of Information Act Regulations

AGENCY: Agency for International Development (USAID).

ACTION: Proposed rule.

SUMMARY: This regulation prescribes the procedures and standards USAID follows in processing requests for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. The Act requires agencies to review their FOIA regulations, and no later than 180 days after enactment, directed the head of each agency to issue regulations on various elements of its FOIA program.

DATES: Submit comments on or before November 25, 2016.

FOR FURTHER INFORMATION CONTACT: Lynn P. Winston, Bureau for Management, Office of Management Services, Information Records Division, U.S. Agency for International Development, Washington, DC 20523–

6601; tel. 202–712–0960, fax: 202–216–3070.

SUPPLEMENTARY INFORMATION: On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016. The Act addresses a range of procedural issues that affect agency FOIA regulations, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal, and that they provide dispute resolution services at various times throughout the FOIA process. The Act also, among other things, codifies the Department of Justice’s “foreseeable harm” standard, amends Exemption 5, creates a new “Chief FOIA Officer Council,” and adds two new elements to agency Annual FOIA Reports.

List of Subjects in 22 CFR Part 212

Freedom of information.

For the reasons stated in the preamble, USAID proposes to revise 22 CFR part 212 to read as follows:

PART 212—PUBLIC INFORMATION

Subpart A—General Provisions

- 212.1 Purpose and scope.
- 212.2 Policy.
- 212.3 Records available on the Agency’s Web site.

Subpart B—Proactive Disclosures of Agency Records

- 212.4 Materials available for public inspection and copying.

Subpart C—Requirements for Making Requests

- 212.5 How to make a request for records.

Subpart D—Responsibility for Responding to Requests

- 212.6 Designation of authorized officials.
- 212.7 Processing of request.

Subpart E—Reasons for Withholding Some Records

- 212.8 General policy.
- 212.9 Exemption 1: National defense and foreign policy.
- 212.10 Exemption 2: Internal personnel rules and practices.
- 212.11 Exemption 3: Records exempted by other statutes.
- 212.12 Exemption 4: Trade secrets and confidential commercial or financial information.
- 212.13 Exemption 5: Internal memoranda.
- 212.14 Exemption 6: Clearly unwarranted invasion of personal privacy.
- 212.15 Exemption 7: Law enforcement.
- 212.16 Exemption 8: Records on financial institutions.
- 212.17 Exemption 9: Records concerning geological information.
- 212.18 Exclusions one through three.

Subpart F—Timing of Responses to Requests

- 212.19 Time limits.

Subpart G—Responses to Requests

- 212.20 Responsibility for responding to requests.

Subpart H—Confidential Commercial Information

- 212.21 Policy and procedures.

Subpart I—Administrative Appeals

- 212.22 Appeal procedures.
- 212.23 Mediation and dispute services.

Subpart J—Preservation of Records

- 212.24 Policy and procedures.

Subpart K—Fees

- 212.25 Fees to be charged—general.
- 212.26 Fees to be charged—requester categories.

Subpart L—Annual Reporting Requirements

- 212.27 Annual Report.
- 212.28 Chief FOIA Officer’s Report.

Subpart M—FOIA Definitions

- 212.29 Glossary.

Subpart N—Other Rights and Services

- 212.30 Rights and services qualified by the FOIA statute.

Subpart O—Privacy Act Provisions

- 212.31 Purpose and scope.
- 212.32 Privacy definitions.
- 212.33 Request for access to records.
- 212.34 Request to amend or correct records.
- 212.35 Appeals from denials of PA amendment requests.
- 212.36 Request for accounting of record disclosures.
- 212.37 Specific exemptions.

Subpart A—General Provisions

§ 212.1 Purpose and scope.

This subpart contains the rules that the United States Agency of International Development (hereinafter “USAID” or “the Agency”) follows in processing requests for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. The rules in this subpart should be read in conjunction with the text of the FOIA. Requests made by individuals for records about themselves under the Privacy Act of 1974, are processed under Subpart O. Definitions of FOIA terms are referenced in Subpart L. As a matter of policy, the Agency makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

§ 212.2 Policy.

(a) As a general policy, USAID follows a balanced approach in administering the FOIA. USAID recognizes the right of the public to access information in the possession of the Agency. USAID also recognizes the legitimate interests of