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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-490]

Schedules of Controlled Substances: Placement of Furanyl Fentanyl, 4-Fluoroisobutyryl Fentanyl, Acryl Fentanyl, Tetrahydrofuranyl Fentanyl, and Ocfentanil in Schedule I; Correction

AGENCY: Drug Enforcement Administration, Department of Justice.
ACTION: Final rule; correcting amendment.

SUMMARY: The Drug Enforcement Administration is correcting a final order that appeared in the **Federal Register** on November 29, 2018. The document issued an action maintaining the placement of furanyl fentanyl, 4-fluoroisobutyryl fentanyl, acryl fentanyl, tetrahydrofuranyl fentanyl, and ocfentanil, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, in schedule I of the Controlled Substances Act. A drafting oversight in the amendatory instructions did not correctly update the prefatory language on isomers to reflect the change in the paragraph number for the designation of 3-methylthiofentanyl.

DATES: Effective Date: May 8, 2019.

FOR FURTHER INFORMATION CONTACT: Lynnette M. Wingert, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

SUPPLEMENTARY INFORMATION: On May 29, 1987, the Drug Enforcement Administration (DEA) placed six substances, including 3-methylthiofentanyl, into schedule I of the Controlled Substances Act. 52 FR 20070. At that time, the introductory text was revised to clearly indicate that optical and geometric isomers of 3-methylthiofentanyl were controlled. On January 8, 1988, paragraph (b)(34), the listing for 3-methylthiofentanyl, was redesignated to (b)(35), but the introductory text was not revised. 53 FR 500. On May 16, 2016, paragraph

(b)(35), the listing for 3-methylthiofentanyl, was redesignated to (b)(36), but the introductory text was not revised. 81 FR 22023. On June 7, 2017, paragraph (b)(36), the listing for 3-methylthiofentanyl, was redesignated to (b)(37), but the introductory text was not revised. 82 FR 26349. On April 20, 2018, paragraph (b)(37), the listing for 3-methylthiofentanyl, was redesignated to (b)(38), but the introductory text was not revised. 83 FR 17486. On November 29, 2018, paragraph (b)(38), the listing for 3-methylthiofentanyl, was redesignated to (b)(41), the present listing for 3-methylthiofentanyl, and a further error was introduced by modifying the reference to (b)(34) in the preamble to (b)(39), due to a drafting fault. 83 FR 61320.

Previously, the prefatory language has identified 3-methylthiofentanyl by paragraph number. However, the paragraph numbers have changed frequently over time, as new substances are identified and added to the list of schedule I substances in § 1308.11(b). In order to avoid similar oversights or confusion in the future, this correction changes the designation to reference 3-methylthiofentanyl by name rather than by paragraph number.

Because this final rule is limited to a technical correction for accuracy and does not substantively alter any regulation, and is therefore insignificant in nature and impact, and inconsequential to the public, the Agency finds good cause that notice and public procedure are unnecessary to the promulgation of this correction. 5 U.S.C. 553(b)(B). The Agency also finds that this technical correction merely clarifies or explains the existing regulation and is therefore an interpretive rule that does not require notice and comment rulemaking. 5 U.S.C. 553(b)(A); *see also Reno-Sparks Indian Colony v. EPA*, 336 F.3d 899, 909-10 (9th Cir. 2003) (stating that a Technical Correction “was interpretive because it does not change existing substantive law” and thus could be promulgated “by foregoing notice and comment procedures”).

Because, as described above, this final rule is limited to a technical correction for accuracy and does not substantively alter any regulation, and is therefore insignificant in nature and impact, and inconsequential to the public, the Agency finds good cause to make this final rule effective upon the date of publication and to forego thirty days prior notice. *See* 5 U.S.C. 553(d)(3). In addition, pursuant to 5 U.S.C. 553(d)(2), interpretive rules do not require thirty days prior notice before they may become effective. Therefore, because this technical correction is an

interpretive rule, it may be made effective immediately. 5 U.S.C. 553(d)(2).

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, 21 CFR part 1308 is amended 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), 956(b), unless otherwise noted.

■ 2. Revise the introductory text of § 1308.11(b) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(b) *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of 3-methylthiofentanyl only, the term isomer includes the optical and geometric isomers):

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Dated: May 3, 2019.

Uttam Dhillon,

Acting Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-484]

Schedules of Controlled Substances: Placement of beta-Hydroxythiofentanyl in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.
ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Drug Enforcement Administration places *beta*-hydroxythiofentanyl (*N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropanamide), also known as *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-*N*-phenyl-propanamide, including its isomers, esters, ethers,