**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

**[Docket No. DEA–479]**

## Schedules of Controlled Substances: Extension of Temporary Placement of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA and 5F-CUMYL-P7AICA in Schedule I of the Controlled Substances Act

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Temporary rule; temporary scheduling order; extension.

**SUMMARY:** The Acting Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to extend the temporary schedule I status of naphthalen-1-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (trivial names: NM2201; CBL2201), *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (trivial name: 5F-AB-PINACA), 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA, SGT–78), methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (trivial names: MMB-CHMICA, AMB-CHMICA), and 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-*b*]pyridine-3-carboxamide (trivial name: 5F-CUMYL-P7AICA), including their optical, positional, and geometric isomers, salts, and salts of isomers. The schedule I status of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA currently is in effect until July 10, 2020. This temporary order will extend the temporary scheduling of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA for one year or until the permanent scheduling action for these substances is completed, whichever occurs first.

**DATES:** This temporary scheduling order, which extends the order (83 FR 31877, July 10, 2018), is effective July 10, 2020, and expires on July 10, 2021. If DEA publishes a final rule making this scheduling action permanent, this order will expire on the effective date of that rule, if the effective date is earlier than July 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Scott Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8209.

**SUPPLEMENTARY INFORMATION:**

### Background and Legal Authority

On July 10, 2018, the former Acting Administrator of the Drug Enforcement Administration (DEA) published a temporary scheduling order in the **Federal Register** (83 FR 31877) placing naphthalen-1-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (trivial names: NM2201; CBL2201), *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (trivial name: 5F-AB-PINACA), 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA, SGT–78), methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (trivial names: MMB-CHMICA, AMB-CHMICA), and 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-*b*]pyridine-3-carboxamide (trivial name: 5F-CUMYL-P7AICA) in schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). That order was effective on the date of publication, and was based on findings by the former Acting Administrator of DEA (Acting Administrator) that the temporary scheduling of these substances was necessary to avoid an imminent hazard to the public safety pursuant to subsection (h)(1). Subsection (h)(2) requires that the temporary control of these substances expire two years from the effective date of the scheduling order, *i.e.,* on July 10, 2020. However, this same subsection also provides that during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, the temporary scheduling [1] of that substance may be extended for up to one year. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services (HHS),[2] or on the petition of any interested party.

The Acting Administrator, on his own motion, has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA. DEA is simultaneously publishing a notice of proposed rulemaking for the placement of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA in schedule I elsewhere in this issue of the **Federal Register**. If that proposed rule is finalized, scheduling of these substances will be made permanent by publication of a final rule in the **Federal Register**.

Pursuant to 21 U.S.C. 811(h)(2), the Acting Administrator orders that the temporary scheduling of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA, including their optical, positional, and geometric isomers, salts, and salts of isomers, be extended for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

### Regulatory Matters

The CSA provides for an expedited temporary scheduling action where the Attorney General, as delegated to the Administrator of DEA, may, by order, place a substance in schedule I if such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h). That same subsection also provides that the temporary scheduling of a substance shall expire at the end of two years from the date of the issuance of such temporary scheduling order, except that the Attorney General may, during the pendency of proceedings under 21 21 U.S.C. 811(a)(1) to permanently schedule the substance, extend the temporary scheduling for up to one year.

To the extent that 21 U.S.C. 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued and extended, DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, do not apply to this extension of the temporary scheduling action. The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an order instead of proceeding by rulemaking. Given that Congress specifically requires the Attorney

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

[2] The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations.

General to follow rulemaking procedures for other kinds of scheduling actions, see 21 U.S.C. 811(a), it is noteworthy that, in subsection 811(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule. In the alternative, even if this action were subject to 5 U.S.C. 553, the Acting Administrator finds that there is good cause to forgo the notice and comment period and the delayed effective date requirements of such section, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety that these substances would present if scheduling expired, for the reasons expressed in the temporary scheduling order (83 FR 31877, July 10, 2018). Further, DEA believes that this order extending the 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. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by 5 U.S.C. 553 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), the principles reaffirmed in Executive Order 13563 (Improving Regulation and Regulatory Review), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB). This order is not an Executive Order 13771 regulatory action.

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. As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. 5 U.S.C. 801, 804(3). It is in the public interest to maintain the temporary placement of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA in schedule I because they pose a public health risk, for the reasons expressed in the temporary scheduling order (83 FR 31877, July 10, 2018). The temporary scheduling action was taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h), temporary scheduling orders are not subject to notice and comment rulemaking procedures. DEA understands that the CSA frames temporary scheduling actions as orders rather than rules to ensure that the process moves swiftly, and this extension of the temporary scheduling order continues to serve that purpose. For the same reasons that underlie 21 U.S.C. 811(h), that is, the need to place these substances in schedule I because they pose an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of this extension of the temporary scheduling order. Therefore, in accordance with 5 U.S.C. 808(2), this order extending the temporary scheduling order shall take effect immediately upon its publication. DEA has submitted a copy of this order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Congressional Review Act, 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

**Timothy J. Shea,**

*Acting Administrator.*

[FR Doc. 2020–14902 Filed 7–9–20; 10:00 am]

**BILLING CODE 4410–09–P**