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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1308

[Docket No. DEA-565]

#### Schedules of Controlled Substances: Placement of cyclopentyl fentanyl, isobutyryl fentanyl, para-chloroisobutyryl fentanyl, para-methoxybutyryl fentanyl, and valeryl fentanyl 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 rule that appeared in the **Federal Register** on November 25, 2020. The document issued an action placing five fentanyl-related substances (cyclopentyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide), isobutyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide), *para*-chloroisobutyryl fentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide), *para*-methoxybutyryl fentanyl (*N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide), and valeryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide), including their

isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, permanently in schedule I of the Controlled Substances Act, specifically to the opiates list under DEA regulations. The published document assigned incorrect paragraph numbers to all five substances, and inadvertently removed four other substances from the listed opiates.

**DATES:** *Effective date:* March 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

**SUPPLEMENTARY INFORMATION:** On November 25, 2020, the Drug Enforcement Administration (DEA) permanently placed five fentanyl-related substances (cyclopentyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide), isobutyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide), *para*-chloroisobutyryl fentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide), *para*-methoxybutyryl fentanyl (*N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide), and valeryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide) in schedule I of the Controlled Substances Act (CSA), specifically to the opiates list under 21 CFR 1308.11(b). 85 FR 75231. The final rule incorrectly assigned paragraph numbers 22, 40, 56, and 59 under paragraph (b) to cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, and *para*-methoxybutyryl fentanyl, respectively, overriding previously assigned paragraph numbers for four listed

opiates crotonyl fentanyl, ketobemidone, *para*-fluorofentanyl, and phenampromide (*i.e.*, (b)(22), (40), (56), and (59)). In addition, the final rule incorrectly added valeryl fentanyl as a new paragraph (b)(75) instead of (b)(76). This document updates the numbering of all listed opiates in paragraph (b), and specifically corrects the paragraph numbers for cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl, and reassigns paragraph numbers for crotonyl fentanyl, ketobemidone, *para*-fluorofentanyl, and phenampromide. It bears emphasis that DEA still considers the four substances (crotonyl fentanyl, ketobemidone, *para*-fluorofentanyl, and phenampromide) to have been schedule I substances during the time period from the issuance of the November 25, 2020, final rule to this correction, despite these inadvertent numbering errors.<sup>1</sup>

#### 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 21 CFR part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11(b), revise the table to read as follows:

#### § 1308.11 Schedule I.

*	*	*	*	*
(b)	*	*	*	

(1) Acetyl- <i>alpha</i> -methylfentanyl ( <i>N</i> -[1-(1-methyl-2-phenethyl)-4-piperidinyl]- <i>N</i> -phenylacetamide) .....	9815
(2) Acetylmethadol .....	9601
(3) Acetyl fentanyl ( <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylacetamide) .....	9821
(4) Acryl fentanyl ( <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylacrylamide; also known as acryloylfentanyl) .....	9811
(5) AH-7921 (3,4-dichloro- <i>N</i> -[1-(dimethylamino)cyclohexylmethyl]benzamide) .....	9551
(6) Allylprodine .....	9602
(7) Alphacetylmethadol (except <i>levo</i> -alphacetylmethadol also known as <i>levo-alpha</i> -acetylmethadol, levomethadyl acetate, or LAAM) .....	9603
(8) Alphameprodine .....	9604
(9) Alphamethadol .....	9605

<sup>1</sup> Under the CSA, a controlled substance may only be removed from the schedules, or transferred to another schedule, where DEA expressly does so by a scheduling action issued in accordance with 21

U.S.C. 811 and published in the **Federal Register**. DEA took no such action with respect to crotonyl fentanyl, ketobemidone, *para*-fluorofentanyl, and phenampromide. Accordingly, the scheduling

status of these four substances was never altered by the final rule that appeared in the **Federal Register** on November 25, 2020.

(10) <i>alpha</i> -Methylfentanyl ( <i>N</i> -[1-( <i>alpha</i> -methyl- <i>beta</i> -phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-( <i>N</i> -propanilido)piperidine) .....	9814
(11) <i>alpha</i> -Methylthiofentanyl ( <i>N</i> -[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]- <i>N</i> -phenylpropanamide) .....	9832
(12) Benzethidine .....	9606
(13) Betacetylmethadol .....	9607
(14) <i>beta</i> -Hydroxyfentanyl ( <i>N</i> -[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]- <i>N</i> -phenylpropanamide) .....	9830
(15) <i>beta</i> -Hydroxy-3-methylfentanyl ( <i>N</i> -[1-(2-hydroxy-2-phenylethyl)-3-methyl-4-piperidinyl]- <i>N</i> -phenylpropanamide) .....	9831
(16) <i>beta</i> -Hydroxythiofentanyl ( <i>N</i> -[1-(2-hydroxy-2-(thiophen-2-yl)ethyl)piperidin-4-yl]- <i>N</i> -phenylpropionamide) .....	9836
(17) Betameprodine .....	9608
(18) Betamethadol .....	9609
(19) Betaprodine .....	9611
(20) Butyryl fentanyl ( <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylbutyramide) .....	9822
(21) Clonitazene .....	9612
(22) Crotonyl fentanyl (( <i>E</i> )- <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylbut-2-enamide) .....	9844
(23) Cyclopentyl fentanyl ( <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylcyclopentanecarboxamide) .....	9847
(24) Cyclopropyl fentanyl ( <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylcyclopropanecarboxamide) .....	9845
(25) Dextromoramide .....	9613
(26) Diampromide .....	9615
(27) Diethylthiambutene .....	9616
(28) Difenoxin .....	9168
(29) Dimenoxadol .....	9617
(30) Dimepheptanol .....	9618
(31) Dimethylthiambutene .....	9619
(32) Dioxaphetyl butyrate .....	9621
(33) Dipipanone .....	9622
(34) Ethylmethylthiambutene .....	9623
(35) Etonitazene .....	9624
(36) Etoxidine .....	9625
(37) 4-Fluoroisobutyryl fentanyl ( <i>N</i> -(4-fluorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)isobutyramide; also known as <i>para</i> -fluoroisobutyryl fentanyl) .....	9824
(38) Fentanyl ( <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylfuran-2-carboxamide) .....	9834
(39) Furethidine .....	9626
(40) Hydroxypethidine .....	9627
(41) Isobutyryl fentanyl ( <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylisobutyramide) .....	9827
(42) Ketobemidone .....	9628
(43) Levomoramide .....	9629
(44) Levophenacymorphan .....	9631
(45) Methoxyacetyl fentanyl (2-methoxy- <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylacetamide) .....	9825
(46) 3-Methylfentanyl ( <i>N</i> -[3-methyl-1-(2-phenylethyl)-4-piperidinyl]- <i>N</i> -phenylpropanamide) .....	9813
(47) 3-Methylthiofentanyl ( <i>N</i> -[3-methyl-1-(2-thienylethyl)-4-piperidinyl]- <i>N</i> -phenylpropanamide) .....	9833
(48) Morpheridine .....	9632
(49) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine) .....	9661
(50) MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine) .....	9560
(51) Noracymethadol .....	9633
(52) Norlevorphanol .....	9634
(53) Normethadone .....	9635
(54) Norpipanone .....	9636
(55) Ocfentanil ( <i>N</i> -(2-fluorophenyl)-2-methoxy- <i>N</i> -(1-phenethylpiperidin-4-yl)acetamide) .....	9838
(56) <i>ortho</i> -Fluorofentanyl ( <i>N</i> -(2-fluorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)propionamide; also known as 2-fluorofentanyl) .....	9816
(57) <i>para</i> -Chloroisobutyryl fentanyl ( <i>N</i> -(4-chlorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)isobutyramide) .....	9826
(58) <i>para</i> -Fluorobutyryl fentanyl ( <i>N</i> -(4-fluorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)butyramide) .....	9823
(59) <i>para</i> -Fluorofentanyl ( <i>N</i> -(4-fluorophenyl)- <i>N</i> -[1-(2-phenylethyl)-4-piperidinyl]propanamide) .....	9812
(60) <i>para</i> -Methoxybutyryl fentanyl ( <i>N</i> -(4-methoxyphenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)butyramide) .....	9837
(61) PEPAP (1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine) .....	9663
(62) Phenadoxone .....	9637
(63) Phenampromide .....	9638
(64) Phenomorphan .....	9647
(65) Phenoperidine .....	9641
(66) Piritramide .....	9642
(67) Proheptazine .....	9643
(68) Properidine .....	9644
(69) Propiram .....	9649
(70) Racemoramide .....	9645
(71) Tetrahydrofuran fentanyl ( <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenyltetrahydrofuran-2-carboxamide) .....	9843
(72) Thiofentanyl ( <i>N</i> -phenyl- <i>N</i> -[1-(2-thienyl)ethyl-4-piperidinyl]propanamide) .....	9835
(73) Tilidine .....	9750
(74) Trimeperidine .....	9646
(75) U-47700 (3,4-dichloro- <i>N</i> -[2-(dimethylamino)cyclohexyl]- <i>N</i> -methylbenzamide) .....	9547
(76) Valeryl fentanyl ( <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenylpentanamide) .....	9840

\* \* \* \* \*

**D. Christopher Evans,***Acting Administrator.*

[FR Doc. 2021-06596 Filed 3-30-21; 8:45 am]

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**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****21 CFR Part 1308**

[Docket No. DEA-491]

**Schedules of Controlled Substances: Extension of Temporary Placement of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 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 order to extend the temporary schedule I status of ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-EDMB-PINACA); methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-MDMB-PICA); *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (trivial names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-fluorobenzyl)); 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial names: 5F-CUMYL-PINACA; SGT-25); and (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (trivial name: FUB-144), and their optical, positional, and geometric isomers, salts, and salts of isomers. The schedule I status of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 currently is in effect until April 16, 2021. This temporary order will extend the temporary scheduling of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 for one year or until the permanent scheduling action for these substances is completed, whichever occurs first.

**DATES:** This order, which extends the temporary scheduling order that DEA previously issued for these substances (84 FR 15505, April 16, 2019), is effective April 16, 2021, and expires on April 16, 2022. 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 April 16, 2022.

**FOR FURTHER INFORMATION CONTACT:**

Terrence L. Boos, Drug and Chemical Evaluation Section, Drug Enforcement Administration; Telephone: (571) 362-3249.

**SUPPLEMENTARY INFORMATION:****Background and Legal Authority**

On April 16, 2019, the former Acting Administrator of the Drug Enforcement Administration (DEA) published a temporary scheduling order in the **Federal Register** (84 FR 15505) placing ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-EDMB-PINACA); methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-MDMB-PICA); *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (trivial names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-fluorobenzyl)); 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial names: 5F-CUMYL-PINACA; SGT-25); and (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (trivial name: FUB-144) 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 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 April 16, 2021. 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<sup>1</sup> 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),<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations.

or on the petition of any interested party.

The Acting Administrator of DEA, on his own motion, has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144. DEA is simultaneously publishing a notice of proposed rulemaking for the placement of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 in schedule I elsewhere in this issue of the **Federal Register**. If that proposed rule is finalized, DEA will publish a final rule in the **Federal Register** to make permanent the schedule I status of these substances.

Pursuant to 21 U.S.C. 811(h)(2), the Acting Administrator orders that the temporary scheduling of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144, and 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 U.S.C. 811(a)(1) to permanently schedule the substance, extend the temporary scheduling for up to one year.

To the extent that subsection 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 General to follow rulemaking procedures for other kinds of scheduling actions, see 21 U.S.C. 811(a), it is