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#### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

#### PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, revise Certificate of Compliance No. 1042 to read as follows:

#### § 72.214 List of approved spent fuel storage casks.

\* \* \* \* \*

*Certificate Number:* 1042.

*Initial Certificate Effective Date:* June 7, 2017

*Amendment Number 1 Effective Date:* June 17, 2020.

*Amendment Number 2 Effective Date:* October 26, 2021.

*SAR Submitted by:* TN Americas LLC.

*SAR Title:* Final Safety Analysis Report for the NUHOMS® EOS Dry Spent Fuel Storage System.

*Docket Number:* 72–1042.

*Certificate Expiration Date:* June 7, 2037.

*Model Number:* EOS–37PTH, EOS–89BTH, 61BTH Type 2.

Dated: August 4, 2021.

For the Nuclear Regulatory Commission.

**Margaret M. Doane,**

*Executive Director for Operations.*

[FR Doc. 2021–17227 Filed 8–11–21; 8:45 am]

BILLING CODE 7590–01–P

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1026

#### Truth in Lending (Regulation Z); Impact of the 2021 Juneteenth Holiday on Certain Closed-End Mortgage Requirements

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interpretive rule.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing this interpretive rule to provide guidance on certain Regulation Z timing requirements related to rescission of closed-end mortgages and the TILA–RESPA Integrated Disclosures (TRID). These timing requirements are based on a definition of “business day” that excludes days that are designated as legal public holidays under Federal law. The interpretive rule explains these timing requirements in light of recent legislation that designated “Juneteenth National Independence Day, June 19” (Juneteenth) as a Federal legal public holiday. It clarifies that, if the relevant closed-end rescission or TRID time period began on or before June 17, 2021, then June 19, 2021, was considered a business day, but nothing prohibits creditors from providing longer time periods. Therefore, it would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of these provisions.

**DATES:** This interpretive rule is effective on August 12, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Pedro De Oliveira, Lanique Eubanks, Jaclyn Maier, or Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 17, 2021, the President signed legislation that amended 5 U.S.C. 6103(a) to add “Juneteenth National Independence Day, June 19” (Juneteenth) to the list of Federal legal

public holidays (Federal holidays).<sup>1</sup> Various regulatory provisions cross-reference or otherwise refer to the Federal holidays listed in 5 U.S.C. 6103(a), including the Regulation Z definition of “business day.” In Regulation Z, “business day” is defined in § 1026.2(a)(6) generally to mean “a day on which the creditor’s offices are open to the public for carrying on substantially all of its business functions.” However, for purposes of certain specified Regulation Z provisions, § 1026.2(a)(6) defines business day to mean: “[A]ll calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year’s Day, the Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.”<sup>2</sup> This is referred to herein as the “specific business day” definition.

The legislation that made Juneteenth a Federal holiday took effect immediately.<sup>3</sup> Therefore, June 19 became a Federal holiday on June 17, 2021. By virtue of the cross-reference to 5 U.S.C. 6103(a) in § 1026.2(a)(6), the days that are considered Federal holidays under the specific business day definition in Regulation Z also changed on June 17, 2021. The Bureau understands that this presented interpretive questions and compliance challenges for the mortgage industry because the Juneteenth holiday occurred only two days after the date of the law change. Based on industry inquiries and outreach to the Bureau following the June 17, 2021, amendment to 5 U.S.C. 6103(a), the Bureau understands these issues were particularly acute for transactions that either (1) closed on or before June 17, 2021, but for which consumers’ rescission periods had not yet expired or (2) were close to the

<sup>1</sup> Juneteenth National Independence Day Act, Public Law 117–17, 135 Stat. 287 (2021).

<sup>2</sup> Comment 2(a)(6)–2 further provides that four Federal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year’s Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. The comment states that when one of these holidays falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday but, nonetheless, the observed holiday is a business day for purposes of the specific business day definition. Like the four Federal holidays listed in comment 2(a)(6)–2, Juneteenth is identified in 5 U.S.C. 6103(a) by a specific date. For 2021, Federal offices observed the Juneteenth holiday on Friday, June 18, 2021. For purposes of the specific business day definition, June 18, 2021, was a business day.

<sup>3</sup> The law took effect when it was signed by the President on June 17, 2021. *See, e.g., United States v. Casson*, 434 F.2d 415 (D.C. Cir. 1970) (indicating that a law that is effective on enactment goes into effect at the exact time that the President signs it).

planned closing date on June 17, 2021, and subject to certain disclosure timing requirements of the TRID provisions of Regulation Z.

This interpretive rule provides guidance on the 2021 Juneteenth holiday and the specific business day definition in these two situations.<sup>4</sup>

## II. Discussion

### *Guidance on Determining the Applicable Specific Business Day Definition*

The specific business day definition applies to various timing requirements in Regulation Z, including rescission of closed-end mortgages and some TRID provisions.<sup>5</sup> Regulation Z does not specify which version of the specific business day definition applies to these provisions when the definition changes during the relevant time period—the version of the definition in effect when the relevant time period begins, or the new version of the definition that takes effect before the relevant time period ends. The Bureau is issuing this interpretive rule to clarify that the version of the specific business day definition that applies to these provisions is the version of the definition in effect when the relevant time period begins.<sup>6</sup> Accordingly, in the context of the 2021 Juneteenth Federal

<sup>4</sup> The Bureau is adopting this interpretation effective on the date of publication in the **Federal Register**. The interpretive rule explains the Bureau's view of the legal requirements that were applicable around the time of the Juneteenth holiday in June 2021.

<sup>5</sup> With respect to rescission, the affected regulatory provisions are § 1026.23(a)(3)(i) and (b)(1)(v). With respect to TRID, the affected regulatory provisions are § 1026.19(e)(1)(iii)(B), (e)(1)(iv), (e)(2)(i)(A), (e)(4)(ii), and (f)(1)(ii) and (iii). Other provisions of Regulation Z rely on the specific business day definition and therefore also were affected by the legislation. Those provisions are outside the scope of this interpretive rule.

<sup>6</sup> The Bureau understands that the law amending 5 U.S.C. 6103(a) to add Juneteenth to the list of Federal holidays was signed by the President shortly after 4 p.m. EST on June 17, 2021. See Press Release, The White House, Remarks by President Biden at Signing of the Juneteenth National Independence Day Act (June 17, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/17/remarks-by-president-biden-at-signing-of-the-juneteenth-national-independence-day-act/>. While the law took effect immediately, the Bureau is clarifying that the version of the specific business day definition in effect prior to June 17, 2021, applies where the relevant time period began at any time on June 17, 2021. The requirements discussed in this interpretive rule generally apply with respect to the day that a particular event occurred, not the time of day. Accordingly, the Bureau believes it is more consistent with these provisions not to distinguish among actions taken at different times on June 17, 2021. Treating all actions taken on June 17, 2021, the same in the context of these provisions also serves the purposes of the regulation, by providing certainty to creditors and uniformity in the application of the specific business day definition across the mortgage market.

holiday and the affected closed-end rescission and TRID provisions, if the relevant time period began on or before June 17, 2021, then June 19, 2021, is a business day for purposes of the specific business day definition. If the relevant time period began after June 17, 2021, then June 19, 2021, is a Federal holiday for purposes of the specific business day definition.

The Bureau concludes that this reading is consistent with the purposes of the specific business day definition, which are to provide certainty and uniformity to the timing requirements.<sup>7</sup> When the Federal Reserve Board (Board) established the specific business day definition, it explained that creditors and consumers need certainty as to the length of the rescission period; otherwise, they risk a delay in the loan funding date to account for an extension of the rescission period.<sup>8</sup> Similarly, in issuing the TRID requirements, the Bureau explained that creditors and consumers need certainty as to the length of the waiting and other time periods required under the TRID provisions in order to establish a closing date and reduce the potential for unexpected closing delays.<sup>9</sup> Interpreting these provisions to require use of an amended specific business day definition that takes effect only after the relevant time period begins would undermine that certainty, as it may require a change in the timing of loan funding, closing, and other dates that are dependent on the definition.

The Bureau notes that the affected closed-end rescission and TRID provisions do not prohibit creditors from providing longer time periods.

<sup>7</sup> See, e.g., 74 FR 23289, 23294 (May 19, 2009) (applying the specific business day definition to the seven-business-day waiting period prior to consummation after receipt of required disclosures, explaining that (1) doing so makes it easier for creditors to determine how to meet timing requirements, especially where the creditor has multiple offices not open on the same days; (2) the standard for determining when a waiting period ends will be the same for all creditors; and (3) whether a creditor's offices are open or closed will not affect the time that a consumer has to receive and review disclosures).

<sup>8</sup> The Board explained that it adopted the two-tier definition because transactions subject to the right of rescission need a more definite and uniform business day definition. See 46 FR 20848, 20850 (Apr. 7, 1981). Regulatory authority for this provision was later transferred to the Bureau. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1061, 124 Stat. 1376, 2036 (2010) (transferring to the Bureau the “consumer financial protection functions” previously vested in certain other Federal agencies, including the Board).

<sup>9</sup> The Bureau applied the specific business day definition to various TRID timing provisions to facilitate compliance for industry and to reduce the potential for closing delays. See 78 FR 79730, 79770, 79837, 79851 (Dec. 31, 2013).

Therefore, as discussed further below, it would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of these provisions.

### *Application to Specific Rescission Provisions*

As noted above, the Bureau is clarifying that the version of the specific business day definition that applies to the provisions discussed in this interpretive rule is the version of the definition in effect when the relevant time period begins. This section discusses how that guidance applies to closed-end rescission provisions that reference the specific business day definition.

Section 1026.23(a)(3)(i) provides that, for closed-end transactions covered by the right of rescission, the consumer may exercise the right to rescind until midnight of the third business day following the last of (1) delivery of all material disclosures;<sup>10</sup> (2) consummation of the loan;<sup>11</sup> and (3) delivery of the notice of the right to rescind to each consumer entitled to rescind.<sup>12</sup> Pursuant to § 1026.23(b)(1)(v), the notice must include the date the rescission period expires.

For purposes of § 1026.23(a)(3)(i), the rescission period is determined based on the version of the specific business day definition in effect when the rescission period begins. Similarly, for purposes of § 1026.23(b)(1)(v), the rescission period expiration date disclosed on the notice of the right to rescind is determined based on the version of the specific business day definition in effect when the rescission period begins. Therefore, if the rescission period began on or before June 17, 2021, for purposes of determining the rescission period and

<sup>10</sup> The material disclosures are the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.43(g). See 12 CFR 1026.23(a)(3)(ii).

<sup>11</sup> “Consummation” is defined in § 1026.2(a)(13) as the time that a consumer becomes contractually obligated on the credit transaction. Per comment 2(a)(13)–1, when a contractual obligation is created is determined by State law.

<sup>12</sup> A creditor is required to provide two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice must be on a separate piece of paper but may appear with other information such as the itemization of the amount financed. The creditor may deliver the notice after the transaction is consummated, but the rescission period will not begin to run until the notice is given. See 12 CFR 1026.23(b)(1) and comments 23(b)(1)–2 and –4.

the disclosed rescission period expiration date, Saturday, June 19, 2021, is a business day notwithstanding the addition of Juneteenth as a Federal holiday. For example, assume the rescission period began on Wednesday, June 16, 2021. Consistent with the version of the specific business day definition in effect when the rescission period began, the creditor disclosed June 19, 2021, as the rescission period expiration date on the notice of the right to rescind. Because the rescission period began on or before June 17, 2021, Saturday, June 19, 2021, is a business day for purposes of determining the rescission period and the disclosed rescission period expiration date. In this example, the rescission period expired on Saturday, June 19, 2021; the original rescission period expiration date did not change as a result of the addition of Juneteenth as a Federal holiday. The Bureau notes, however, that for purposes of compliance with § 1026.23(a)(3)(i) and (b)(1)(v), a creditor may provide a longer rescission period.

#### *Application to Specific TRID Provisions*

As noted above, the Bureau is clarifying that the version of the specific business day definition that applies to the provisions discussed in this interpretive rule is the version in effect when the relevant time period begins. This section discusses how that guidance applies to TRID provisions that reference the specific business day definition.

*Delivery of Loan Estimate prior to consummation.* Section 1026.19(e)(1)(iii)(B) provides that creditors generally must deliver or place in the mail the Loan Estimate to consumers no later than seven business days before consummation of the transaction.<sup>13</sup> Consistent with the guidance described above, the Bureau concludes that the seven-business-day waiting period in § 1026.19(e)(1)(iii)(B) is determined based on the version of the specific business day definition in effect on the date the creditor delivers the Loan Estimate or places it in the mail. For example, if a creditor delivered or placed the Loan Estimate in the mail on Monday, June 14, 2021, the creditor complied with § 1026.19(e)(1)(iii)(B) if consummation occurred on or after Tuesday, June 22, 2021, because the Loan Estimate was delivered or mailed seven business days (including June 19, 2021) before consummation. The Bureau notes,

<sup>13</sup> The seven-business-day waiting period begins when the creditor delivers the Loan Estimate or places it in the mail, not when the consumer receives or is considered to have received the Loan Estimate. Comment 19(e)(1)(iii)-2.

however, that it would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of § 1026.19(e)(1)(iii)(B) because creditors may provide the Loan Estimate earlier than seven business days before consummation.

*Mailbox rules.* Section 1026.19(e)(1)(iv), (e)(4)(ii), and (f)(1)(iii) provide that if the Loan Estimate or Closing Disclosure, as applicable, is not provided to the consumer in person, the consumer is considered to have received the Loan Estimate or Closing Disclosure three business days after it is delivered or placed in the mail when determining compliance with the disclosure timing requirements in those sections.<sup>14</sup> These are referred to herein as “mailbox rules.” The Bureau concludes that, for purposes of § 1026.19(e)(1)(iv), (e)(4)(ii), and (f)(1)(iii), the three-business-day period is determined based on the version of the specific business day definition in effect on the date the creditor delivers the disclosures or places them in the mail.<sup>15</sup> For example, if a creditor did not provide the Loan Estimate or Closing Disclosure to the consumer in person but delivered or placed it in the mail on Thursday, June 17, 2021, the consumer is considered to have received the Loan Estimate or Closing Disclosure on Monday, June 21, 2021. It would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of the mailbox rules in § 1026.19(e)(1)(iv), (e)(4)(ii), and (f)(1)(iii).

*Receipt of revised Loan Estimate and Closing Disclosure prior to consummation.* Section 1026.19(e)(4)(ii) provides, in part, that the consumer must receive any revised Loan Estimate no later than four business days prior to consummation.<sup>16</sup> Section

<sup>14</sup> In such circumstances, the creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier. Comments 19(e)(1)(iv)-1 and -2 provide that if the Loan Estimate is not provided to the consumer in person (such as by mail or email), the creditor may, alternatively, rely on evidence that the consumer received the Loan Estimate earlier than three business days after it is delivered or placed in the mail. See also comments 19(e)(4)(ii)-1 and 19(f)(1)(iii) 1 and -2.

<sup>15</sup> Relatedly, § 1026.19(e)(2)(i)(A) provides that neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction before the consumer has, among other things, received the Loan Estimate. While § 1026.19(e)(2)(i)(A) does not refer to business days when referencing the consumer receiving the Loan Estimate, § 1026.2(a)(6) lists the specific business day definition as applying to § 1026.19(e)(2)(i)(A). The same interpretation that applies to the mailbox rules for purposes of determining the receipt of disclosures also applies to § 1026.19(e)(2)(i)(A).

<sup>16</sup> This provision also prohibits a creditor from delivering a revised Loan Estimate on or after the

1026.19(f)(1)(ii)(A) provides that the creditor must ensure that the consumer receives the Closing Disclosure no later than three business days before consummation. Unlike § 1026.19(e)(1)(iii)(B), the § 1026.19(e)(4)(ii) and (f)(1)(ii)(A) timing requirements begin when the disclosures are received by the consumer and not when they are delivered or placed in the mail. However, as noted above, § 1026.19(e)(4)(ii) and (f)(1)(iii) provide that if the revised Loan Estimate or Closing Disclosure is not provided to the consumer in person, the consumer is considered to have received the revised Loan Estimate or Closing Disclosure three business days after it is delivered or placed in the mail.

Thus, the Bureau concludes that the four- and three-business-day timing requirements in § 1026.19(e)(4)(ii) and (f)(1)(ii)(A), respectively, are determined based on the version of the specific business day definition in effect on the date the creditor either provides the required disclosures to the consumer in person or, if not provided in person, the date the creditor delivers or places the required disclosures in the mail. For example, if a creditor provided the Closing Disclosure to the consumer in person on Thursday, June 17, 2021, the creditor complied with § 1026.19(f)(1)(ii)(A) if consummation occurred on or after Monday, June 21, 2021, because the Closing Disclosure was delivered in person no later than three business days (including June 19, 2021) before consummation. The Bureau notes, however, that it would also be compliant for creditors to have considered June 19, 2021, a Federal holiday for purposes of § 1026.19(e)(4)(ii) and (f)(1)(ii)(A) because creditors may provide the revised Loan Estimate or Closing Disclosure earlier than required.

### **III. Regulatory Matters**

This is an interpretive rule issued under the Bureau's authority to interpret Regulation Z, including under section 1022(b)(1) of the Dodd-Frank Act, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.<sup>17</sup>

By operation of section 130(f) of the Truth in Lending Act (TILA), no provision of TILA sections 130, 108(b), 108(c), 108(e), or 112 imposing any liability applies to any act done or

date on which the creditor provides the Closing Disclosure. 12 CFR 1026.19(e)(4)(ii).

<sup>17</sup> 12 U.S.C. 5512(b)(1).

omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.<sup>18</sup>

As an interpretive rule, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.<sup>19</sup> Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>20</sup> The Bureau has determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.<sup>21</sup>

Pursuant to the Congressional Review Act,<sup>22</sup> the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a "major rule" as defined by 5 U.S.C. 804(2).

#### IV. Signing Authority

The Acting Director of the Bureau, David Uejio, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: August 5, 2021.

#### Laura Galban,

*Federal Register Liaison, Bureau of Consumer Financial Protection.*

[FR Doc. 2021-17050 Filed 8-11-21; 8:45 am]

**BILLING CODE 4810-AM-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1308

[Docket No. DEA-498]

#### Schedules of Controlled Substances: Placement of 4,4'-DMAR 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 4,4'-dimethylaminorex (common name: 4,4'-DMAR) including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle 4,4'-DMAR.

**DATES:** *Effective date:* September 13, 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:

##### Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2-4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention adding a drug or other substance to a specific schedule, the Secretary of the Department of Health and Human Services (HHS),<sup>1</sup> after

consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance. 21 U.S.C. 811(d)(3). In the event that the Secretary of HHS (Secretary) did not so consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling are set forth in 21 U.S.C. 811(a) and (b). Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of the Drug Enforcement Administration (DEA Administrator or Administrator). 28 CFR 0.100.

#### Background

4,4'-Dimethylaminorex (common name: 4,4'-DMAR; other names: 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine) is a synthetic stimulant drug structurally related to 4-methylaminorex (4-MAR), a schedule I substance in the United States and a Schedule I substance in the 1971 Convention. In November 2015, the Director-General of the World Health Organization recommended the Secretary-General of the United Nations (UN Secretary-General) place 4,4'-DMAR in Schedule II of the 1971 Convention, as 4,4'-DMAR produces a spectrum of pharmacological effects similar to psychomotor stimulants listed in Schedule II of the 1971 Convention, and has dependence and abuse potential. In May 2016, the UN Secretary-General advised the Secretary of State of the United States (U.S. Secretary of State) that the Commission on Narcotic Drugs (CND) voted to place 4,4'-dimethylaminorex (4,4'-DMAR) in Schedule II of the 1971 Convention (CND Dec/59/5) during its 59th Session in March 2016.

The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

<sup>18</sup> 15 U.S.C. 1640(f); *see also* 12 U.S.C. 2617(b), 12 CFR 1024.4 (similar protection conferred by the Real Estate Settlement Procedures Act from certain liability).

<sup>19</sup> 5 U.S.C. 553(b).

<sup>20</sup> 5 U.S.C. 603(a), 604(a).

<sup>21</sup> 44 U.S.C. 3501 *et seq.*

<sup>22</sup> 5 U.S.C. 801 *et seq.*

<sup>1</sup> As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985).