



Meeting: Village Board
Meeting Date: 3/14/11
Agenda Item: 6a

Mission Statement

Delivering quality services in a courteous, cost-effective and efficient manner.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: Burt R. McIntyre, President
Village Board of Trustees

REVIEWED BY:

REPORT FROM: Bob Bartelt, Village Administrator

AGENDA ITEM: 6a -- Status update on the synthetic Cannabis legislation

POLICY ISSUE

None

PRIOR ACTION/REVIEW

On January 24, 2011, the Village Board passed Ordinance 2011-4, which bans the use, possession and sale of synthetic marijuana products.

FISCAL IMPACT:

1. Is There A Fiscal Impact? No
2. Is it Currently Budgeted? No
3. Future Impact to the Operating Budget? No

BACKGROUND INFORMATION

At the January 24, 2011, Village Board meeting, Public Safety Director Ed Jahnke presented information about the growing problem and dangers of synthetic marijuana use. The Village Board voted unanimously to pass Ordinance 2011-4, which bans the use, possession and sale of synthetic marijuana products within the village.

At the February 14, 2011, Village Board meeting, Trustee Steffen requested the following future agenda item: "Provide monthly status updates on the synthetic Cannabis legislation developed by Rep. Bies in 2010 and co-sponsored by Sen. Harsdorf in the Senate and due for a vote later this spring."

NEW INFORMATION

On February 28, 2011, Tyler Sivret, a staff member for Rep. Garey Bies, forwarded draft state legislation regarding the regulation of synthetic marijuana (See Attachment I). According to Mr. Sivret, this is the final draft that now will be forwarded to other Assembly members for co-sponsorship. Mr. Sivret could not provide a timeline for action on the proposed bill, as the item is not considered a priority at this time.

On March 1, 2011, the Drug Enforcement Agency (DEA) placed an emergency federal ban on the five formerly legal substances commonly used in synthetic marijuana products (See attachments II and III.) These substances have been placed in the federal drug schedule I on an emergency basis,

which means that they have been designated as having no medical use for at least one year while the agency considers whether or not to make the scheduling permanent.

Village staff had consulted with Attorney Dennis Duffy for an opinion as to how Ordinance 2011-4 fit with the pending state legislation and federal ban. Dennis said he has no legal opinion on the matter, since the village has every right to pass an ordinance managing an issue until such time as state or federal legislation is developed that would supersede it.

Chief Ed Janke said he feels the ordinance proactively addresses the issue, and the developments on the state and federal levels further underline the seriousness and dangerousness of synthetic marijuana products.

RECOMMENDED ACTION

Review only

ATTACHMENTS

- I Draft state legislation from Rep. Garey Bies
- II CNN article relating to DEA ban on synthetic marijuana
- III TIME article relating to DEA ban on synthetic marijuana
- IV Federal Register documentation that now places Synthetic Cannabinoids into Schedule 1 of 21 CFR Part 1308.



2011 BILL

1 AN ACT *to amend* 961.14 (4) (intro.), 961.14 (4) (x), 961.14 (7) (intro.), 961.41 (1)
2 (e) (intro.), 961.41 (1m) (e) (intro.) and 961.41 (3g) (d); and *to create* 59.54 (25g),
3 66.0107 (1) (bn), 961.14 (4) (tb), 961.14 (4) (te), 961.14 (4) (th), 961.14 (4) (tL),
4 961.14 (4) (tp), 961.14 (4) (tr), 961.14 (4) (tu), 961.14 (4) (ty), 961.14 (4) (wgm),
5 961.14 (7) (m), 961.14 (7) (n) and 961.41 (3g) (em) of the statutes; **relating to:**
6 certain controlled substances and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits the manufacture, distribution, delivery, or possession of substances included in the schedule of controlled substances. Current law categorizes substances into five schedules, depending on the nature of the substance. Schedule I substances are those that have a high potential for abuse, have no currently accepted medical use, and are not accepted as safe for use in treatment under medical supervision.

This bill identifies several nonnarcotic, hallucinogenic substances that are commonly known as "synthetic cannabinoids" and classifies those substances as Schedule I controlled substances. The bill also identifies two stimulant substances and classifies those as Schedule I controlled substances.

Under the bill, a person who possesses a synthetic cannabinoid may, for a first offense, be fined up to \$1,000, imprisoned for up to six months, or both. For a second or subsequent offense, the person is guilty of a Class I felony and may be fined up to

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\$10,000, imprisoned for up to three years and six months, or both. A person who manufactures, distributes, or delivers a synthetic cannabinoid, or who possesses a synthetic cannabinoid with the intent to manufacture, distribute, or deliver it, is guilty of a Class H felony and subject to a fine up to \$10,000, imprisonment for up to six years, or both. The bill also enables a town, city, village, or county to pass an ordinance that provides a forfeiture for a first violation of possession of a synthetic cannabinoid.

Under the bill, a person who possesses either of the stimulant substances may, for a first offense, be fined up to \$5,000, imprisoned for up to one year, or both. For a second or subsequent offense, the person is guilty of a Class I felony and may be fined up to \$10,000, imprisoned for up to three years and six months, or both. A person who manufactures, distributes, or delivers either of the stimulant substances, or who possesses either of the stimulant substances with the intent to manufacture, distribute, or deliver it, is guilty of a felony, the classification of which depends on the amount of the controlled substance involved in the offense.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.54 (25g) of the statutes is created to read:

2 59.54 (25g) POSSESSION OF A SYNTHETIC CANNABINOID. The board may enact and
3 enforce an ordinance to prohibit the possession of any controlled substance specified
4 in s. 961.14 (4) (tb) to (ty), and provide a forfeiture for a violation of the ordinance,
5 except that any person who is charged with possession of a controlled substance
6 specified in s. 961.14 (4) (tb) to (ty) following a conviction for possession of a controlled
7 substance in this state shall not be prosecuted under this subsection. Any ordinance
8 enacted under this subsection applies in every municipality within the county.

9 **SECTION 2.** 66.0107 (1) (bn) of the statutes is created to read:

10 66.0107 (1) (bn) Enact and enforce an ordinance to prohibit the possession of
11 a controlled substance specified in s. 961.14 (4) (tb) to (ty) and provide a forfeiture

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1 for a violation of the ordinance, except that any person who is charged with
2 possession of a controlled substance specified in s. 961.14 (4) (tb) to (ty) following a
3 conviction for possession of a controlled substance in this state shall not be
4 prosecuted under this paragraph.

5 SECTION 3. 961.14 (4) (intro.) of the statutes is amended to read:

6 961.14 (4) HALLUCINOGENIC SUBSTANCES. (intro.) Any material, compound,
7 mixture or preparation which contains any quantity of any of the following
8 hallucinogenic substances, including any of their salts, isomers, precursors, analogs,
9 esters, ethers, and salts of isomers, esters, or ethers that are theoretically possible
10 within the specific chemical designation, in any form ~~including a substance, salt,~~
11 ~~isomer or salt of an isomer~~ contained in a plant, obtained from a plant, or chemically
12 synthesized:

13 SECTION 4. 961.14 (4) (tb) of the statutes is created to read:

14 961.14 (4) (tb) Cannabicyclohexonal:
15 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol.

16 SECTION 5. 961.14 (4) (te) of the statutes is created to read:

17 961.14 (4) (te) CP47,497 and homologues:
18 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol.

19 SECTION 6. 961.14 (4) (th) of the statutes is created to read:

20 961.14 (4) (th) HU-210:
21 [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
22 10a-tetrahydrobenzo[c]chromen-1-ol]), also known as
23 (6aR,10aR)-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-
24 dimethyl-6H-dibenzo[b,d]pyran-9-methanol.

25 SECTION 7. 961.14 (4) (tL) of the statutes is created to read:

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SECTION 7

1 961.14 (4) (tL) JWH-018: 1-pentyl-3-(1-naphthoyl)indole, also known as
2 Naphthalen-1-yl-(1-pentylindol-3-yl)methanone

3 SECTION 8. 961.14 (4) (tp) of the statutes is created to read:

4 961.14 (4) (tp) JWH-073: 1-butyl-3-(1-naphthoyl)indole, also known as
5 Naphthalen-1-yl-(1-butylindol-3-yl)methanone

6 SECTION 9. 961.14 (4) (tr) of the statutes is created to read:

7 961.14 (4) (tr) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also
8 known as 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone.

9 SECTION 10. 961.14 (4) (tu) of the statutes is created to read:

10 961.14 (4) (tu) JWH-200:
11 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole

12 SECTION 11. 961.14 (4) (ty) of the statutes is created to read:

13 961.14 (4) (ty) JWH-250: 1-pentyl-3-(2-methoxyphenylacetyl)indole, also
14 known as 2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone.

15 SECTION 12. 961.14 (4) (wgm) of the statutes is created to read:

16 961.14 (4) (wgm) 4-iodo-2,5-dimethoxy-beta-phenylethylamine, commonly
17 known as "2C-I".

18 SECTION 13. 961.14 (4) (x) of the statutes is amended to read:

19 961.14 (4) (x) 4-methoxyamphetamine, commonly known as "PMA."

20 SECTION 14. 961.14 (7) (intro.) of the statutes is amended to read:

21 961.14 (7) STIMULANTS. (intro.) Any material, compound, mixture or
22 preparation which contains any quantity of any of the following substances having
23 a stimulant effect on the central nervous system, including any of their precursors,
24 analogs, salts, isomers and salts of isomers that are theoretically possible within the
25 specific chemical designation:

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1 SECTION 15. 961.14 (7) (m) of the statutes is created to read:

2 961.14 (7) (m) Methylendioxyprovalerone, commonly known as “MDPV.”

3 SECTION 16. 961.14 (7) (n) of the statutes is created to read:

4 961.14 (7) (n) 4-methylmethcathinone, commonly known as “mephedrone” or
5 “4-MMC.”

6 SECTION 17. 961.41 (1) (e) (intro.) of the statutes is amended to read:

7 961.41 (1) (e) *Phencyclidine, amphetamine, methamphetamine, ~~and~~*
8 *methcathinone, methylendioxyprovalerone, and 4-methylmethcathinone.* (intro.)

9 If the person violates this subsection with respect to phencyclidine, amphetamine,
10 methamphetamine, ~~or~~ methcathinone, methylendioxyprovalerone, or
11 4-methylmethcathinone, or a controlled substance analog of phencyclidine,
12 amphetamine, methamphetamine, ~~or~~ methcathinone,
13 methylendioxyprovalerone, or 4-methylmethcathinone, and the amount
14 manufactured, distributed, or delivered is:

15 SECTION 18. 961.41 (1m) (e) (intro.) of the statutes is amended to read:

16 961.41 (1m) (e) *Phencyclidine, amphetamine, methamphetamine, ~~and~~*
17 *methcathinone, methylendioxyprovalerone, and 4-methylmethcathinone.* (intro.)

18 If a person violates this subsection with respect to phencyclidine, amphetamine,
19 methamphetamine, ~~or~~ methcathinone, methylendioxyprovalerone, or
20 4-methylmethcathinone, or a controlled substance analog of phencyclidine,
21 amphetamine, methamphetamine, ~~or~~ methcathinone,
22 methylendioxyprovalerone, or 4-methylmethcathinone, and the amount
23 possessed, with intent to manufacture, distribute, or deliver, is:

24 SECTION 19. 961.41 (3g) (d) of the statutes is amended to read:

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SECTION 19

1 961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person
2 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,
3 amphetamine, methcathinone, methylenedioxypropyrolone,
4 4-methylmethcathinone, psilocin or psilocybin, or a controlled substance analog of
5 lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone,
6 methylenedioxypropyrolone, 4-methylmethcathinone, psilocin or psilocybin, the
7 person may be fined not more than \$5,000 or imprisoned for not more than one year
8 in the county jail or both upon a first conviction and is guilty of a Class I felony for
9 a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered
10 a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the
11 offender has at any time been convicted of any felony or misdemeanor under this
12 chapter or under any statute of the United States or of any state relating to controlled
13 substances, controlled substance analogs, narcotic drugs, marijuana, or depressant,
14 stimulant, or hallucinogenic drugs.

15 SECTION 20. 961.41 (3g) (em) of the statutes is created to read:

16 961.41 (3g) (em) *Synthetic cannabinoids.* If a person possesses or attempts to
17 possess a controlled substance specified in s. 961.14 (4) (tb) to (ty), or a controlled
18 substance analog of a controlled substance specified in s. 961.14 (4) (tb) to (ty), the
19 person may be fined not more than \$1,000 or imprisoned for not more than 6 months
20 or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent
21 offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent
22 offense if, prior to the offender's conviction of the offense, the offender has at any time
23 been convicted of any felony or misdemeanor under this chapter or under any statute
24 of the United States or of any state relating to controlled substances, controlled

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- 1 substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or
2 hallucinogenic drugs.
3 (END)

ATTACHMENT II



DEA imposes "emergency" ban to control synthetic marijuana

Washington (CNN) -- Effective Tuesday, "Spice" will not be a legal alternative to pot. The Drug Enforcement Administration is making the sale and possession of synthetic marijuana illegal for at least one year.

The agency says the action is necessary "to avoid an imminent hazard to the public safety."

The ban that takes effect Tuesday was announced by the DEA in November, with the agency saying then it would make possessing and selling the chemicals used to produce synthetic marijuana illegal in the United States for at least one year while the DEA and the Department of Health and Human Services study whether the chemicals should be permanently controlled.

Five chemicals most commonly found in products like "Spice" and "K2" are being classified as Schedule I controlled substances, a category reserved for unsafe, highly abused substances with no medical usage. The DEA said in November it was using its "emergency scheduling authority" to temporarily control the chemicals.

The drugs are manufactured overseas and are typically laced on plant material and sold as herbal incense or plant food. They create a marijuana-like high when smoked.

According to the DEA, increased use of synthetic marijuana has led to a surge in emergency-room visits and calls to poison-control centers. Adverse health effects associated with its use include seizures, hallucinations, paranoid behavior, agitation, anxiety, nausea, vomiting, racing heartbeat and elevated blood pressure.

"Fake pot" has already been banned in 18 states and several countries. All five branches of the U.S. military prohibit military personnel from possessing or using them.

Find this article at:

<http://www.cnn.com/2011/US/02/28/dea.synthetic.marijuana>

Check the box to include the list of links referenced in the article.



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DEA's Emergency Ban on Chemicals in 'Fake Pot' Goes Into Effect

By MAIA SZALAVITZ Tuesday, March 1, 2011

As I wrote here last week, the Drug Enforcement Administration (DEA) had previously warned that it would place an emergency ban on five "legal high" substances commonly used in so-called fake marijuana.

Before 9 a.m. Tuesday, the DEA announced that the emergency ban goes into effect today. That means that selling fake pot products like K2, Spice, Blaze and Red X Dawn — if they continue to include synthetic cannabinoids JWH-018, JWH-073, JWH-200, CP-47,497, or cannabicyclohexanol — is now officially illegal.

(More on TIME.com: Do Bans on 'Legal Highs' Threaten Pharmaceutical Development?)

These substances have been placed in the federal drug schedule I on an emergency basis, which means that they have been designated as having no medical use for at least one year while the agency considers whether or not to make the scheduling permanent.

"Young people are being harmed when they smoke these dangerous 'fake pot' products and wrongly equate the products' 'legal' retail availability with being 'safe,'" said DEA Administrator Michele M. Leonhart in the press release announcing the ban. "Parents and community leaders look to us to help them protect their kids, and we have not let them down. Today's action, while temporary, will reduce the number of young people being seen in hospital emergency rooms after ingesting these synthetic chemicals to get high."

In the past, manufacturers of such products did not stop selling "fake pot," but simply switched to using similar chemicals that are still legal — something that is likely to occur rapidly under the new ban.

Dan Francis, head of the Retail Compliance Association, a group that represents retailers who sell these substances, said in an earlier interview that despite his members' opposition to the ban on the chemicals, "We're all about compliance. [When the ban goes into effect], immediately what we'll start doing is trying to get member stores to comply. We're not trying to find ways to break the law. We're trying to make sure our members understand how to keep within the law."

The substances in "bath salts" like Ivory Wave have not yet been placed under emergency ban.

Find this article at:

<http://healthland.time.com/2011/03/01/deas-emergency-ban-on-chemicals-in-fake-pot-goes-into-effect/>

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Rules and Regulations

Federal Register

Vol. 76, No. 40

Tuesday, March 1, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-345F]

Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids into Schedule I

AGENCY: Drug Enforcement Administration (DEA), U.S. Department of Justice.

ACTION: Final order.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this final order to temporarily place five synthetic cannabinoids into the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions. The substances are 1-pentyl-3-(1-naphthoyl)indole (JWH-018), 1-butyl-3-(1-naphthoyl)indole (JWH-073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200), 5-(1,1-dimethylheptyl)-2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1*R*,3*S*)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue). This action is based on a finding by the Administrator that the placement of these synthetic cannabinoids into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this order, the full effect of the CSA and its implementing regulations including criminal, civil and administrative penalties, sanctions and regulatory controls of Schedule I substances will be imposed on the manufacture, distribution, possession, importation, and exportation of these synthetic cannabinoids.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office

of Diversion Control, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, VA 22152, telephone (202) 307-7183, fax (202) 353-1263, or e-mail ode@usdoj.gov.

DATES: Effective Date: March 1, 2011.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473), which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. The Attorney General may extend the temporary scheduling up to six months during pendency of proceedings under 21 U.S.C. 811(a)(1). A substance may be temporarily scheduled under the emergency provisions of the CSA 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 under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the DEA Administrator (28 CFR 0.100).

As per section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Deputy Administrator, now Administrator, transmitted notice of her intention to temporarily place JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services (HHS) in a letter dated October 6, 2010. In response to this notification, the Assistant Secretary of Health, HHS communicated in a letter dated November 22, 2010, to the then-DEA Acting Administrator that there are no exemptions or approvals in effect for JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol under Section 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355). The substances are not listed in any other schedule in 21 U.S.C. 812.

A notice of intent to temporarily place JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol into Schedule I of the CSA was published in the *Federal Register* on November 24, 2010 (75 FR 71635). Before making a

finding that temporarily placing a substance into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator must consider three of the eight factors (factors 4, 5, and 6) set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are the history and current pattern of abuse, the scope, duration, and significance of abuse, and what, if any, risk there is to the public health, including actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

The temporary placement of these five synthetic cannabinoids into Schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety. First, these substances are not intended for human consumption, but there has been a rapid and significant increase in abuse of these substances in the United States. As a result of this abuse, synthetic cannabinoids are banned in at least 18 states in the United States and several countries, and all five branches of the U.S. military prohibit military personnel from possessing or using synthetic cannabinoids. Second, law enforcement has seized synthetic cannabinoids in conjunction with controlled substances and based on self-reports to law enforcement and health care professionals, synthetic cannabinoids are abused for their psychoactive properties. Third, numerous state and local public health departments and poison control centers have issued health warnings describing the adverse health effects associated with synthetic cannabinoids. Based on scientific data currently available, these five substances have the potential to be extremely harmful and, therefore, pose an imminent hazard to the public safety.

History and Current Pattern of Abuse

A "cannabinoid" is a class of chemical compounds in the marijuana plant that are structurally related. The cannabinoid Δ^9 -tetrahydrocannabinol (THC) is the primary psychoactive constituent of marijuana. "Synthetic cannabinoids" are a large family of chemically unrelated structures functionally (biologically) similar to THC, the active principle of marijuana.

Two of the five synthetic cannabinoids (CP-47,497 and cannabicyclohexanol) were synthesized in the early 1980s for research purposes

in the investigation of the cannabinoid system. JWH-018, JWH-073, and JWH-200 were prepared in the mid-1990s and evaluated to further advance understanding of drug-receptor interactions regarding the cannabinoid system. Developed and evaluated as research tools, no other known legitimate uses have been identified for these five synthetic cannabinoids. Furthermore, these five synthetic cannabinoids are not intended for human consumption.

The emergence of these five synthetic cannabinoids represents a recent phenomenon in the U.S. designer drug market. Since the initial identification of JWH-018 by U.S. forensic laboratories, many additional synthetic cannabinoids including JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol have been identified in related herbal incense products and plant food. These synthetic cannabinoids have purported psychotropic effects when smoked or ingested. These substances are typically found in powder form or are dissolved in appropriate solvents, such as acetone, before being sprayed on the plant material contained in the herbal incense products.

The popularity of these THC-like synthetic cannabinoids has significantly increased throughout the United States, and they are being abused for their psychoactive properties as reported by law enforcement, the medical community, and through scientific literature.

Some of the product names include, but are not limited to, "Spice," "K2," and many more. Due to sophisticated marketing, the products that contain these five THC-like synthetic cannabinoids are perceived as "legal" alternatives to marijuana despite the fact that they are typically advertised as herbal incense or plant food (Bonsai-18) by Internet retailers, tobacco shops, head shops, and other domestic brick and mortar retail venues, and labeled "Not For Human Consumption." No evidence exists that these synthetic cannabinoids have value as an additive to herbal incense products due to the absence of odor associated with the substances.

Based on law enforcement encounters, these five substances are typically found laced on plant material. The plant material is packaged in small pouches or packets, and is being sold over the Internet, in tobacco and smoke shops, drug paraphernalia shops, gas stations, and convenience stores as herbal incense products, giving customers of all ages direct access to these five substances. Research articles

propose that the packaging is professional and conspicuous, targeting young people, possibly eager to use cannabis, but who are afraid of the judicial consequences and/or association with illicit drugs.

According to Internet discussion boards and law enforcement encounters reported directly to DEA, these five synthetic cannabinoids are being both abused alone and/or being sprayed on plant material (which is then smoked). The most common route of administration of these synthetic cannabinoids is by smoking (using a pipe, a water pipe, or rolling the drug-spiked plant material in cigarette papers).

These five synthetic cannabinoids alone or spiked on plant material have the potential to be extremely harmful due to their method of manufacture and high pharmacological potency. There is little information regarding the pharmacology, toxicology, and safety of these substances in humans given the minimal amount of pre-clinical investigations undertaken regarding these substances; therefore, the full danger of these drugs has not yet been determined.

As of January 31, 2011, 18 states in the United States and other countries have controlled one or more of the five synthetic cannabinoids. Moreover, all five branches of the military prohibit their personnel from possessing or using synthetic cannabinoids associated with products such as Spice and K2.

Scope, Duration, and Significance of Abuse

According to forensic laboratory reports, the initial appearance of these synthetic cannabinoids in herbal incense products in the United States occurred in November 2008 when U.S. Customs and Border Protection first encountered products such as Spice.

The increasing abuse of the five synthetic cannabinoids is demonstrated by the increase in federal, state, and local law enforcement activity associated with these substances. The National Forensic Laboratory Information System, a national repository for drug evidence analyses from forensic laboratories across the United States, has reported in excess of 500 exhibits containing synthetic cannabinoid from January 2010 through September 2010. These exhibits came from numerous states across the nation including Alabama, Arkansas, California, Florida, Hawaii, Iowa, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Missouri, North Dakota, Nebraska, Nevada, Oklahoma,

Pennsylvania, South Carolina, Tennessee, and Virginia.

Even though there is no evidence of legitimate non-research related use for these synthetic cannabinoids, multiple shipments of JWH-018 and JWH-073 have been encountered by U.S. Customs and Border Protection in 2010. One enforcement operation encountered five shipments of JWH-018 totaling over 50 kilograms (110.2 pounds) of powder. In addition, bulk loads of JWH-018 and JWH-200 have been encountered by law enforcement in 2010. For example, in Casper, Wyoming, DEA agents encountered large quantities of herbal incense products laced with the synthetic cannabinoid JWH-018 in conjunction with methamphetamine and other illegal drugs in execution of search and arrest warrants.

On March 24, 2010, the American Association of Poison Control Centers reported receiving 112 calls from 15 states related to synthetic cannabinoids to U.S. poison centers since 2009. Just nine months later, the number of calls increased to over 2,700 from 49 states and the District of Columbia.

What, If Any, Risk There Is to the Public Health

Health warnings have been issued by numerous state and local public health departments and poison control centers describing the adverse health effects associated with these synthetic cannabinoids and their related products, including agitation, anxiety, nausea, vomiting, tachycardia (fast, racing heartbeat), elevated blood pressure, tremor, seizures, hallucinations, paranoid behavior, and non-responsiveness.

Smoking these synthetic cannabinoids for the purpose of achieving intoxication and experiencing the psychoactive effects has been identified as a reason for emergency room visits and calls to poison control centers. In a fact sheet by the National Drug Court Institute, the problem of synthetic cannabinoid abuse is described as "significant and disturbing." This is supported by information that was communicated to DEA from one of the major private toxicology laboratories. Based on laboratory findings from drug screens for the period of July 2010 through November 2010, over 3,700 specimens tested positive for either JWH-018 or JWH-073. They also indicated that they were finding 30–35% positivity for specimens submitted by juvenile probation departments.

Case reports describe psychotic episodes, withdrawal, and dependence associated with use of these synthetic cannabinoids, similar to syndromes

observed in marijuana abuse. In addition, based on law enforcement encounters reported directly to DEA, when responding to incidents involving individuals who have reportedly smoked these synthetic cannabinoids, first responders report that these individuals have suffered from intense hallucinations. Moreover, emergency department physicians and toxicologists have reported the adverse health effects associated with smoking herbal incense products laced with these substances. Furthermore, based on law enforcement encounters, suspected Driving Under the Influence of Drug incidents are attributed to the smoking of synthetic cannabinoids. For example, in September 2010, police in Nebraska responded to an incident involving a teenage male who had careened his truck into the side of a residence. After striking the residence and several more items, the teen continued several more yards before coming to a complete stop. Prior to crashing the truck, the individual had driven past a junior high school and nearly struck a child. Upon further investigation, the driver of the vehicle admitted to smoking "Wicked X," a product marketed as "herbal incense" and known to contain synthetic cannabinoids, prior to the accident. Preliminary toxicology reports indicated that the individual did not have any alcohol or other illegal substances in his system.

Detailed chemical analyses by DEA and other investigators have found these synthetic cannabinoids spiked on plant material in herbal incense products marketed to the general public. Product analyses have found variations in both the synthetic cannabinoid found on the plant material and the amount. As proposed in scientific literature, the risk of adverse health effects is further increased by the fact that similar products vary in the composition and concentration of synthetic cannabinoids spiked on the plant material.

Self-reported abuse of these THC-like synthetic cannabinoids either alone (e.g., in pills with the substance in powder form) or spiked on plant material appear extensively on Internet discussion boards, and abuse has been reported to public health officials and law enforcement. The abuse of these substances spiked on plant material is corroborated by forensic laboratory analysis of products encountered by law enforcement.

According to the U.S. Customs and Border Protection, a number of the products and synthetic cannabinoids appear to originate from foreign sources. Product manufacturing operations encountered by law enforcement

corroborate that the herbal incense products are manufactured in the absence of quality controls and devoid of regulatory oversight. Law enforcement has encountered the manufacture of herbal incense products occurring in such places as residential neighborhoods. These products and associated synthetic cannabinoids are readily accessible via the Internet.

Based on the above data, the continued uncontrolled manufacture, distribution, importation, exportation, and possession of JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol pose an imminent hazard to the public safety. DEA is not aware of any recognized therapeutic uses of these synthetic cannabinoids in the United States.

DEA has considered the three criteria for placing a substance into Schedule I of the CSA (21 U.S.C. 812). The data available and reviewed for JWH-073, JWH-018, JWH-200, CP-47,497, and cannabicyclohexanol indicate that these synthetic cannabinoids each 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.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Administrator has considered the available data and the three factors required to support a determination to temporarily schedule five synthetic cannabinoids: 1-butyl-3-(1-naphthoyl)indole, 1-pentyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[[1R,3S]-3-hydroxycyclohexyl]-phenol, and 5-(1,1-dimethyloctyl)-2-[[1R,3S]-3-hydroxycyclohexyl]-phenol in Schedule I of the CSA and finds that temporary placement of these synthetic cannabinoids into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Regulatory Requirements

With the issuance of this final order, JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol become subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, possession, importation, and exportation of a Schedule I controlled substance under the CSA.

1. *Registration.* Any person who manufactures, distributes, dispenses, imports, exports, or possesses JWH-018, JWH-073, JWH-200, CP-47,497, or

cannabicyclohexanol or who engages in research or conducts instructional activities with respect to JWH-018, JWH-073, JWH-200, CP-47,497, or cannabicyclohexanol, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with 21 U.S.C. 823 and 958. Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration and may not continue their activities until DEA has approved that application. Retail sales of Schedule I controlled substances to the general public are not allowed under the Controlled Substances Act.

2. *Security.* JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol are subject to Schedule I security requirements. Accordingly, appropriately registered DEA registrants must manufacture, distribute and store these substances in accordance with 1301.71; 1301.72(a), (c), and (d); 1301.73; 1301.74; 1301.75(a) and (c); and 1301.76 of Title 21 of the Code of Federal Regulations as of March 1, 2011.

3. *Labeling and packaging.* All labeling and packaging requirements for controlled substances set forth in Part 1302 of Title 21 of the Code of Federal Regulations shall apply to commercial containers of JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol. Current DEA registrants shall have thirty (30) calendar days from the effective date of this Final Order to be in compliance with all labeling and packaging requirements.

4. *Quotas.* Quotas for JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol will be established based on registrations granted and quota applications received pursuant to part 1303 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every DEA registrant who possesses any quantity of JWH-018, JWH-073, JWH-200, CP-47,497, or cannabicyclohexanol is required to keep inventory of all stocks of these substances on hand pursuant to 1304.03, 1304.04, and 1304.11 of Title 21 of the Code of Federal Regulations. Every current DEA registrant who desires registration in Schedule I for JWH-018, JWH-073, JWH-200, CP-47,497, or cannabicyclohexanol shall conduct an inventory of all stocks of these substances. Current DEA registrants shall have thirty (30) calendar days from the effective date of this Final Order to be in compliance with all inventory requirements.

6. *Records.* All registrants who handle JWH-018, JWH-073, JWH-200, CP-

47,497, or cannabicyclohexanol are required to keep records pursuant to 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of Title 21 of the Code of Federal Regulations. Current DEA registrants shall have thirty (30) calendar days from the effective date of this Final Order to be in compliance with all recordkeeping requirements.

7. *Reports.* All registrants are required to submit reports in accordance with 1304.33 of Title 21 of the Code of Federal Regulations. Registrants who manufacture or distribute JWH-018, JWH-073, JWH-200, CP-47,497, or cannabicyclohexanol are required to comply with these reporting requirements and shall do so as of March 1, 2011.

8. *Order Forms.* All registrants involved in the distribution of JWH-018, JWH-073, JWH-200, CP-47,497, or cannabicyclohexanol must comply with order form requirements of part 1305 of Title 21 of the Code of Federal Regulations as of March 1, 2011.

9. *Importation and Exportation.* All importation and exportation of JWH-018, JWH-073, JWH-200, CP-47,497, or cannabicyclohexanol must be conducted by appropriately registered DEA registrants in compliance with part 1312 of Title 21 of the Code of Federal Regulations on or after March 1, 2011.

10. *Criminal Liability.* The manufacture, distribution, dispensation, or possession with the intent to conduct these activities; possession; importation; or exportation of JWH-018, JWH-073, JWH-200, CP-47,497, or cannabicyclohexanol not authorized by, or in violation of the CSA or the Controlled Substances Import and Export Act occurring as of March 1, 2011 is unlawful.

Executive Order 12988

This final temporary scheduling order meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This final temporary scheduling order does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this order does not have federalism implications warranting the application of Executive Order 13132.

Congressional Review Act

Pursuant to section 808(2) of the Congressional Review Act, the agency is not required to comply with the Act if it makes a good faith finding that notice

and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. It is in the public interest to schedule these cannabinoids immediately because they pose a public health risk. Use of materials spiked with these cannabinoids has been the cause of emergency room visits and calls to poison control centers. The adverse health effects associated with these synthetic cannabinoids and their related products include agitation, anxiety, nausea, vomiting, tachycardia (fast, racing heartbeat), elevated blood pressure, tremor, seizures, hallucinations, paranoid behavior, and non-responsiveness. The materials have been marketed on products that are available to the general public, and their manufacture is devoid of quality controls and unregulated.

This temporary scheduling action is taken pursuant to section 811(h), which is specifically designed to enable DEA to act in an expeditious manner to avoid an imminent hazard to the public safety from new or designer drugs or abuse of those drugs. Section 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie section 811(h), that is, DEA's need to move quickly to place these five cannabinoids into Schedule 1 because they pose a threat to public health, it would be contrary to the public interest to delay implementation of the temporary scheduling order by requiring DEA to undertake the procedures necessary to comply with the Congressional Review Act prior to the order taking effect.

Unfunded Mandates Reform Act of 1995

This final temporary scheduling order will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$126,400,000 or more (adjusting for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), the Administrator hereby amends 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. Section 1308.11 is amended by adding new paragraphs (g)(1), (2), (3), (4), and (5) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(1) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, its optical, positional, and geometric isomers, salts and salts of isomers—7297 (Other names: CP-47,497)

(2) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, its optical, positional, and geometric isomers, salts and salts of isomers—7298 (Other names: cannabicyclohexanol and CP-47,497 C8 homologue)

(3) 1-Butyl-3-(1-naphthoyl)indole, its optical, positional, and geometric isomers, salts and salts of isomers—7173 (Other names: JWH-073)

(4) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole, its optical, positional, and geometric isomers, salts and salts of isomers—7200 (Other names: JWH-200)

(5) 1-Pentyl-3-(1-naphthoyl)indole, its optical, positional, and geometric isomers, salts and salts of isomers—7118 (Other names: JWH-018 and AM678)

Dated: February 18, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011-4428 Filed 2-28-11; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[Docket No. BOP-1118-F]

RIN 1120-AB18

Inmate Discipline Program/Special Housing Units: Subpart Revision and Clarification

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule; delay of effective date.

SUMMARY: In this document, the Bureau of Prisons delays the effective date of the final rule that appeared in the *Federal Register* on December 8, 2010, (75 FR 76263) and the subsequent correction which appeared in the