Billing Code 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-305]

Control of Immediate Precursor Used in the Illicit Manufacture of Fentanyl as Schedule II Controlled Substances; Correction

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: On June 29, 2010, the Drug Enforcement Administration (DEA) placed the fentanyl immediate precursor chemical "4-anilino-N-phenethyl-4-piperidine," (CASRN 21409-26-7) into Schedule II of the Controlled Substances Act. It has come to DEA's attention that the drug name listed in the final rule contained a minor error and the drug name should have been "4-anilino-N-phenethylpiperidine (ANPP)." This document corrects that listing in the Code of Federal Regulations. Because this change is ministerial, the DEA has determined for good cause that public notice and comment is unnecessary under the Administrative Procedure Act (APA) and is implementing this change by means of a final rule without notice and comment.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kathy L. Federico, Regulatory Drafting Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

SUPPLEMENTARY INFORMATION: On June 29, 2010, the DEA designated ANPP as an immediate precursor for the Schedule II controlled substance fentanyl under the definition set forth in 21 U.S.C. 802(23). 75 FR 37295 (Jun. 29, 2010). ANPP is the immediate chemical intermediary in the synthesis process used by clandestine laboratory operators for the illicit manufacture of the Schedule II controlled substance fentanyl.

In the rulemaking, the DEA inadvertently introduced an error into the drug name. This rulemaking is intended to correct that ministerial error.

Both the notice of proposed rulemaking and the final rule referenced the chemical name as "4-anilino-N-phenethyl-4-piperidine (ANPP)" and "CASRN 21409-26-7" (Chemical Abstract Service Registry Number).[1] 73 FR 19175, 19176 (Apr. 9, 2008); 75 FR 37295, 37296 (Jun. 29, 2010). While the abbreviation ANPP and the Chemical Abstract Service Registry Number 21409-26-7 correctly identified the compound, the name "4-anilino-N-phenethyl-4-piperidine" is incorrect and is without meaning. The correct name is "4-anilino-N-phenethylpiperidine".

There is no existing chemical compound named "4-anilino-N-phenethyl-4-piperidine." While chemists understood which compound was being controlled by the DEA due to the abbreviation ANPP and specific CASRN number, DEA is now correcting the listing in the Code of Federal Regulations (CFR) by revising 21 CFR 1308.12 to provide the correct name.

[1] Chemical Abstract Service Registry Numbers are used to identify specific compounds. Chemicals are often identified by a wide variety of names, which are generated according to international/regional naming conventions relating to chemical formula and chemical structure. Chemical Abstract Service Registry Numbers link a specific chemical compound across various nomenclatures (naming schemes) and are useful in definitively identifying a particular compound. Synonymous names are under one CASRN number.

Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires that agencies, prior to issuing a new rule, publish a notice of proposed rulemaking in the *Federal Register*. The APA also provides, however, that agencies may be exempt from this requirement when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[2]

The name "4-anilino-N-phenethyl-4-piperidine" is without meaning and no substance exists by that chemical name. The inclusion of the "-4" in the middle of the name is nonsensical. Because the correct Chemical Abstract Service Registry Number and abbreviation "ANPP" were given in the original rulemaking, chemists have understood which compound has been (and remains) controlled by DEA. There is no change as to what substance is controlled. Public notice and comment is thus unnecessary.

For the same reasons that the DEA has determined that public notice and comment is unnecessary, the DEA also finds good cause to adopt an effective date that would be less than 30 days after the publication in the *Federal Register* pursuant to the APA. 5 U.S.C. 553(d). Accordingly, this amendment will be effective as of the date of publication in the *Federal Register*.

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:

[2] 5 U.S.C. 553(b)(B).

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

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

2. Section 1308.12 is amended by revising paragraph (g)(3) to read as follows:

§1308.12 Schedule II.

* * * * *

(g) * * *

(3) Immediate precursor to fentanyl:

(i) 4-anilino-N-phenethylpiperidine (ANPP)……8333

(ii) [Reserved]

Date: December 14, 2018.

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Uttam Dhillon,
Acting Administrator.

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