

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-368]

Establishment of Drug Codes for 26 Substances

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

ACTION: Final rule.

SUMMARY: On July 9, 2012, the President signed into law the Synthetic Drug Abuse Prevention Act of 2012 (SDAPA). SDAPA amends the Controlled Substances Act by placing 26 substances in Schedule I. DEA is publishing this rule to establish drug codes for these 26 substances, and to make technical and conforming amendments in accordance with SDAPA.

DATES: *Effective Date:* January 4, 2013.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration, Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone (202) 307-7165.

SUPPLEMENTARY INFORMATION:

Legal Authority

DEA administers, implements, and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act and the Controlled Substances Import and Export Act (21 U.S.C. 801-971), as amended (hereinafter, "CSA"). The implementing regulations for these statutes are found in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. Under the CSA, controlled substances are classified in one of five schedules based upon their potential for abuse, their currently accepted medical use, the lack of accepted safety for use under medical supervision, and the degree of dependence the substance may cause. 21 U.S.C. 812. The list of legislatively scheduled controlled substances is found at 21 U.S.C. 812(c) and the current list of scheduled substances is published at 21 CFR part 1308. These initial schedules may be modified either by legislation or by rulemaking.

Purpose of This Rulemaking

On July 9, 2012, the SDAPA of 2012, Public Law 112-144, Title XI, Subtitle D, became effective. SDAPA amended the CSA by legislatively placing

"cannabimimetic agents"¹ and 26 substances in Schedule I. Public Law 112-144, Title XI, Subtitle D, Section 1152. DEA is publishing this rule to establish drug codes for these 26 substances. These 26 substances include 15 cannabimimetic agents, 9 phenethylamines, and 2 cathinones and are listed in the regulatory text section, below.

Related Procedural Matters

At the time SDAPA became effective on July 9, 2012, a total of 8 substances were covered by temporary scheduling final orders: 5 synthetic cannabinoids (JWH-018, JWH-073, JWH-200, CP-47,497, and CP-47,497 C8 homologue)² and 3 synthetic cathinones (mephedrone, MDPV, and methylone).³ DEA also issued a Notice of Proposed Rulemaking (NPRM) in March 2012, to place the 5 synthetic cannabinoids (JWH-018, JWH-073, JWH-200, CP-47,497, and CP-47,497 C8 homologue) permanently in Schedule I.⁴ With the sole exception of methylone,⁵ these substances were specifically placed in Schedule I by SDAPA. Therefore, it is no longer necessary to finalize the NPRM regarding the 5 synthetic

¹ SDAPA also included a definition of "cannabimimetic agents." Although this rule is only addressing the 26 specific substances, DEA intends to issue a separate rulemaking that will address the broader definition of cannabimimetic agents. Even in the absence of such a rulemaking as of July 9, 2012, cannabimimetic agents, as defined in SDAPA are controlled under Schedule I.

² See DEA Notice of Intent entitled "Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I," published in the *Federal Register* on November 24, 2010, at 75 FR 71635, DEA Notice of Intent; correction entitled "Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I; Correction," published in the *Federal Register* on January 13, 2011, at 76 FR 2287, DEA Final Order entitled "Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids into Schedule I," published in the *Federal Register* on March 1, 2011, at 76 FR 11075, and DEA Final Order entitled "Schedules of Controlled Substances: Extension of Temporary Placement of Five Synthetic Cannabinoids Into Schedule I of the Controlled Substances Act," published in the *Federal Register* on February 29, 2012, at 77 FR 12201.

³ See DEA Notice of Intent entitled "Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cathinones Into Schedule I," published in the *Federal Register* on September 8, 2011, at 76 FR 55616 and DEA Final Order entitled "Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cathinones Into Schedule I," published in the *Federal Register* on October 21, 2011, at 76 FR 65371.

⁴ See Schedules of Controlled Substances: Placement of Five Synthetic Cannabinoids Into Schedule I, 77 FR 12508, Mar. 1, 2012.

⁵ DEA extended the temporary scheduling of methylone in a Final Order published in the *Federal Register* on October 18, 2012 at 77 FR 64032.

cannabinoids (JWH-018, JWH-073, JWH-200, CP-47,497, and CP-47,497 C8 homologue), or to take further action with respect to 2 of the 3 synthetic cathinones (mephedrone and MDPV). However, DEA has posted a copy of the Secretary of Health and Human Services (HHS) Scientific and Medical Evaluation and Scheduling Recommendations regarding the 5 synthetic cannabinoids on www.regulations.gov so that the public can benefit from the scientific review that was undertaken with respect to these substances.⁶ These HHS documents can be found on www.regulations.gov under Docket ID "DEA-2012-0001."

In addition to establishing drug codes for these 26 substances,⁷ this rulemaking makes several technical and conforming amendments to 21 CFR 1308.11 in accordance with SDAPA. This rulemaking adds a new subsection (g) to 21 CFR 1308.11 and gives it the title "cannabimimetic agents," redesignates the old subsection (g) as (h) and retains its title as "[t]emporary listing of substances subject to emergency scheduling," and transfers 7 of the 8 substances currently listed in 21 CFR 1308.11(g) under the title of "[t]emporary listing of substances subject to emergency scheduling," to either the new subsection (g) entitled "cannabimimetic agents" or to the previously existing subsection (d) entitled "[h]allucinogenic substances." In summary, as a result of SDAPA, a new subsection entitled "cannabimimetic agents" will be created and will initially contain 15 substances, the existing subsection entitled "[h]allucinogenic substances" will increase by 11 substances, and the existing subsection entitled "temporary listing of substances subject to emergency scheduling" will be redesignated from (g) to (h) and will decrease from 8 substances to 1 substance (methylone).

⁶ HHS did not provide a Scientific and Medical Evaluation and Scheduling Recommendation regarding mephedrone and MDPV.

⁷ Some of these substances (for example, JWH-018) had already received drug codes by virtue of the prior temporary scheduling actions discussed above. Such substances will retain their previously established drug codes but are included in this rule for purposes of completeness and to ensure that each of these 26 substances are properly classified in the *Code of Federal Regulations*. Substances for which a drug code has not previously been established (for example, 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)) will have a drug code assigned to them by this rule.

Regulatory Analyses*Administrative Procedure Act*

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. This rule merely establishes drug codes for the 26 substances placed in Schedule I by SDAPA, and makes several technical and conforming amendments in accordance with SDAPA. Because DEA has no discretion with respect to these changes, publishing a notice of proposed rulemaking and soliciting public comment are unnecessary. In addition, because the placement of these 26 substances in Schedule I has already been in effect since July 9, 2012, DEA finds good cause exists to make this rule effective immediately upon publication.

Executive Orders 12866 and 13563

This rule, establishing drug codes for the 26 substances placed in Schedule I by SDAPA, and making technical and conforming amendments in accordance with SDAPA has been developed in accordance with the principles of Executive Orders 12866 and 13563.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law, impose enforcement responsibilities on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 13175

This rule is required by statute, will not have tribal implications, and will not impose substantial direct compliance costs on Indian tribal governments.

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this regulation, and by approving it certifies that this

regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

This rule does not involve a collection of information within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$136,000,000 or more (adjusted for inflation) in any one year, and 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. 2 U.S.C. 1532.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in cost or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and export markets. However, DEA has submitted a copy of this rule to both Houses of Congress and to the Comptroller General.

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 part 1308 continues to read as follows:

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

■ 2. Amend § 1308.11 by:

■ a. Adding new paragraphs (d)(36) through (d)(46);

■ b. Redesignating paragraph (g) as paragraph (h) and revising newly redesignated paragraph (h)(1); and

■ c. Adding a new paragraph (g).

The additions and revisions read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(36)	4-methylmethcathinone (Mephedrone)	1248
(37)	3,4-methylenedioxypropylvalerone (MDPV)	7535
(38)	2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E) ..	7509
(39)	2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)	7508
(40)	2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)	7519
(41)	2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)	7518
(42)	2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)	7385
(43)	2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)	7532
(44)	2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)	7517
(45)	2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine (2C-N)	7521
(46)	2-(2,5-Dimethoxy-4-(n-propylphenyl)ethanamine (2C-P)	7524
* * * * *		

(g) *Cannabimimetic agents*. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1)	5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497)	7297
(2)	5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog)	7298
(3)	1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678)	7118
(4)	1-butyl-3-(1-naphthoyl)indole (JWH-073)	7173
(5)	1-hexyl-3-(1-naphthoyl)indole (JWH-019)	7019
(6)	1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200)	7200
(7)	1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250)	6250
(8)	1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081)	7081
(9)	1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122)	7122
(10)	1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398)	7398
(11)	1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	7201
(12)	1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	7694

- (13) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4) 7104
- (14) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole 7008 (SR-18 and RCS-8) 7008
- (15) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203) 7203
- (h) * * *
- (1) 3,4-methylenedioxy-N-methylcathinone (Other names: methylone) 7540
- * * * * *

Dated: December 21, 2012.

Michele M. Leonhart,

Administrator.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9609]

RIN 1545-BK45; 1545-BL29

Treasury Inflation-Protected Securities Issued at a Premium; Bond Premium Carryforward

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on the tax treatment of Treasury Inflation-Protected Securities issued with more than a de minimis amount of premium. This document also contains temporary regulations that provide guidance on the tax treatment of a debt instrument with a bond premium carryforward in the holder's final accrual period, including a Treasury bill acquired at a premium. The regulations in this document provide guidance to holders of Treasury Inflation-Protected Securities and other debt instruments. The text of the temporary regulations in this document also serves as the text of the proposed regulations (REG-140437-12) set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on January 4, 2013.

Applicability Dates: For the dates of applicability, see §§ 1.171-2T(a)(4)(i)(C)(2) and 1.1275-7(h)(2).

FOR FURTHER INFORMATION CONTACT: William E. Blanchard, (202) 622-3900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 5, 2011, temporary regulations (TD 9561) relating to the federal income tax treatment of Treasury Inflation-Protected Securities issued with more than a de minimis amount of premium were published in the **Federal Register** (76 FR 75781). See § 1.1275-7T. A notice of proposed rulemaking (REG-130777-11) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (76 FR 75829). No comments were received on the notice of proposed rulemaking. No public hearing was requested or held.

The proposed regulations are adopted without substantive change by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

1. Final Regulations—Treasury Inflation-Protected Securities (TIPS) Issued With More Than a De Minimis Amount of Premium

The following is a general explanation of the provisions in the final regulations, which are the same as the provisions in the temporary regulations. However, the provisions that were in the temporary regulations are now contained in newly designated paragraphs (g)(2) and (h)(2) of § 1.1275-7 of the final regulations.

TIPS are securities issued by the Department of the Treasury. The principal amount of a TIPS is adjusted for any inflation or deflation that occurs over the term of the security. The rules for the taxation of inflation-indexed debt instruments, including TIPS, are contained in § 1.1275-7 of the Income Tax Regulations. See also § 1.171-3(b) (rules for inflation-indexed debt instruments with bond premium).

Under § 1.1275-7(d)(2)(i), the coupon bond method described in § 1.1275-7(d) is not available with respect to inflation-indexed debt instruments that are issued with more than a de minimis amount of premium (that is, an amount greater than .0025 times the stated principal amount of the security times the number of complete years to the security's maturity). Prior to 2011, TIPS had not been issued with more than a de minimis amount of premium, and the coupon bond method had applied to TIPS rather than the more complex discount bond method described in § 1.1275-7(e).

In 2011, the Treasury Department anticipated that TIPS might be issued with more than a de minimis amount of premium. As a result, in Notice 2011-21 (2011-19 IRB 761), to provide a more

uniform method for the federal income taxation of TIPS, the Treasury Department and the IRS announced that regulations would be issued to provide that taxpayers must use the coupon bond method described in § 1.1275-7(d) for TIPS issued with more than a de minimis amount of premium. As a result, the discount bond method described in § 1.1275-7(e) would not apply to TIPS issued with more than a de minimis amount of premium. Notice 2011-21 provided that the regulations would be effective for TIPS issued on or after April 8, 2011. On December 5, 2011, the Treasury Department and the IRS published the temporary regulations in the **Federal Register**. These temporary regulations contained the rules described in Notice 2011-21 and applied to TIPS issued on or after April 8, 2011. As noted earlier in this preamble, the final regulations are substantively the same as the temporary regulations.

Under the final regulations, a taxpayer must use the coupon bond method described in § 1.1275-7(d) for a TIPS that is issued with more than a de minimis amount of premium. The final regulations include the example from the temporary regulations illustrating how to apply the coupon bond method to a TIPS issued with more than a de minimis amount of premium and a negative yield. As stated in Notice 2011-21, the final regulations apply to TIPS issued on or after April 8, 2011. See § 601.601(d)(2)(ii)(b).

2. Temporary Regulations—Treatment of Bond Premium Carryforward in a Holder's Final Accrual Period

During the consideration of the final regulations relating to TIPS issued with more than a de minimis amount of premium, the Treasury Department and the IRS received questions about the holder's treatment of a taxable zero coupon debt instrument, including a Treasury bill, acquired at a premium and a negative yield. In this situation, as described in more detail below, under §§ 1.171-2 and 1.1016-5(b) of the current regulations, a holder that elected to amortize the bond premium generally would have a capital loss upon the sale, retirement, or other disposition of the debt instrument rather than an ordinary deduction under section 171(a)(1) for all or a portion of the bond premium. This situation, which has arisen as a result of recent market conditions, was not contemplated when the current regulations were adopted in 1997.

Under section 171 and § 1.171-2 of the current regulations, an electing holder amortizes bond premium by offsetting the qualified stated interest (as