STATE OF NORTH DAKOTA
GOVERNOR DOUG BURGUM

NORTH DAKOTA STATE BOARD OF PHARMACY
OFFICE OF THE EXECUTIVE DIRECTOR

MARK J. HARDY, PHARMD | 1838 E INTERSTATE AVE SUITE D • BISMARCK, ND 58503
(701) 877- 2404 • WWW.NDBOARD.PHARMACY • MHARDY@NDBOARD.PHARMACY

Senate Bill 2064 – Controlled Substances Rescheduling

House Human Services Committee – Pioneer Room
10:00 AM - Monday – March 10th, 2025

Chairman Ruby, Members of the House Human Services Committee, for the record I am Mark J. Hardy, PharmD, Executive Director of the North Dakota State Board of Pharmacy. I appreciate the opportunity to be here to speak to you today.

Senate Bill 2064 is the biennial bill introduced by State Board of Pharmacy to bring the Controlled Substances Act up to date with what the Food and Drug Administration [FDA] and Drug Enforcement Administration [DEA] have done over the past two years. This bill also adds to the list of synthetic schedule I drugs.

The drafting of this bill, specifically Schedule I controlled substances was done in conjunction with the ND Attorney General's Office and their State Crime Lab. Our intension in drafting the Schedule I compounds is to be proactive to ensure we have future chemical modifications that could be made to the substances identified as controlled substances. In my testimony is the list of Scheduling Actions from the DEA in chronological order. In my testimony uploaded online, I have added the DEA published registrar citations for each of the substances added so it is available in the legislative record.

I would like to highlight each provision of the bill to ensure you have an understanding of the changes we have proposed for your consideration.

On Page 3, line 30, continuing to Page 4, line 4, represents three additional Opiate substances that have been identified by the DEA as novel compounds used in synthetic drugs.

On Page 7, lines 3-20, are additional fentanyl derivatives scheduled by the DEA. They represent more fentanyl compounds identified in illicit drugs. As you may recall, these Fentanyl compounds have been increasingly tied to numerous overdose deaths.

On Page 16, lines 1-3 and lines 7-8, we request removal of the current listing of two Indole Carboxamides which are synthetic cannabinoids. These are replaced by the compounds listed farther down on the page on lines 16-17 and 26-27. Last session, we were proactive in scheduling these compounds and when the DEA scheduled these their naming is a bit different than how we listed it, so the goal is to match it for consistency, even though they are the same substance. The other compounds on lines 18-25 represent other Indole Carboxamide compounds scheduled by the DEA.

On Page 20, lines 1-2, is an additional Cyclohexylphenols, another chemical variation of a synthetic cannabinoid, which has been identified and scheduled by the DEA.

On Page 27, lines 4-9, are three additional substituted cathinones compounds which are being proposed to be added based on the DEA's scheduling actions. These are stimulant drugs.

Lastly for Schedule I changes, on page 27 line 28 is an additional stimulant compound scheduled by the DEA.

Moving into page 30, line 20, and continuing into page 34, line 3, are proposed changes to the Schedule III anabolic steroids. These are drugs that have a medical purpose. The DEA did a significant rewrite of this section based on their authority granted under a 2014 law called the Designer Anabolic Steroid Control Act. This Act was in response to the increasing misuse of these steroids. The changes are meant to mirror those changes with many additional compounds being added.

On Page 37 line 19, is a new drug, Zuranolone, a schedule IV depressant marketed under the name Zurzuvae which is approved for the treatment of postpartum depression.

On Page 38, lines 15-17, we are proposing the addition of a hallucinogenic substance comprised of a pharmaceutical composition of psilocybin as a Schedule IV controlled substance. This drug currently known as COMP360 is going through FDA clinical trials for use in treatment resistant depression. The reason for the language offered in the amendments is due to psilocybin as it currently stands would now fall as a Schedule I compound without this specific addition. This will allow the drug to be available to patients in North Dakota if it is ultimately approved by the FDA.

As is customary with previous years, on Page 38, line 25, we respectfully ask for an emergency measure be attached to this bill that if enacted would make these changes occur as quickly as possible.

We would respectfully request that the committee consider an amendment to add 7 additional fentanyl compounds as schedule I compounds given the DEA recent scheduling actions. We became aware of DEA scheduling of these substances after the Senate hearing. I did include the scheduling action of these with my testimony.

I do appreciate your attention to this lengthy and complicated bill draft and testimony. I will be happy to answer any questions you may have regarding this important legislation.

PROPOSED AMENDMENT

On Page 7 under line 20 add:

51. BETA-METHYLACETYL FENTANYL (N-PHENYL-N-(1-(2-PHENYLPROPYL)PIPERIDIN-4-YL)ACETAMIDE)
52. META-FLUOROFURANYL FENTANYL (N-3-FLUOROPHENYL)- N-(1-PHENETHYLPIPIERIDIN-4-YL)FURAN-2-CARBOXAMIDE
53. ORTHO-CHLOROFENTANYL (N-(2-CHLOROPHENYL)-N-(1-PHENETHYLPIPERIDIN-4-YL)PROPIONAMIDE
54. ORTHO-METHYLCYCLOPROPYLFENTANYL (N-2- METHYLPHENYL)-N-(1-PHENETHYLPIPERIDIN-4- YL)CYLCOPROPANECARBOXAMIDE)
55. PARA-CHLOROFENTANYL (N-4-CHLOROPHENYL)-N-(1-PHENETHYLPIPERIDIN-4-YL)PROPIONAMIDE)
56. PARA-FLUORO VALERYL FENTANYL (N-(4- FLUOROPHENYL)-N-(1-PHENETHYLPIPERIDIN-4- YL)PENTANAMIDE)
57. TETRAHYDROTHIOFURANYL FENTANYL (N-(1- PHENETHYLPIPERIDIN-4-YL)-NPHENYLTETRAHYDROTHIOPHENE-2-CARBOXAMIDE)

*Scheduled under 21 USC 811(h)
**Extension of temporary control
NC = Not Controlled

SUBSTANCE	PROPOSAL PUBLICATION DATE	FINAL ORDER			CSA SCHEDULE
		PUBLICATION DATE	FEDERAL REGISTER CITATION	EFFECTIVE DATE	
N,N-DIISOPROPYLTRYPTAMINE (DiPT)	01-14-22	07-27-22	87 FR 45076		I Withdrew 2022 proposed rule
2,5-DIMETHOXY-4-CHLOROAMPHETAMINE (DOC)	04-11-22	08-29-22	87 FR 52712		I Withdrew 2022 proposed rule
2,5-DIMETHOXY-4-IODOAMPHETAMINE (DOI)	04-11-22	08-29-22	87 FR 52712		I Withdrew 2022 proposed rule
AMINEPTINE (7-[(10,11-DIHYDRO-5H-DIBENZO[A,D]CYCLOHEPTEN-5-YL)AMINO]HEPTANOIC ACID)	07-22-22	11-17-22	87 FR 68895	12/19/2022	I
[18F]FP-CIT	11-04-21	11-21-22	87 FR 70715	12/21/2022	II --> NC
ZIPEPROL (1-METHOXY-3-[4-(2-METHOXY-2-PHENYLETHYL)PIPERAZIN-1-YL]-1-PHENYLPROPAN-2-OL)	05-14-20	11-21-22	87 FR 70717	12/21/2022	I
MESOCARB (N-PHENYL-N'-(3-(1-PHENYLPROPAN-2-YL)-1,2,3-OXADIAZOL-3-IUM-5-YL)CARBAMIMIDATE)	08-11-21	11-22-22	87 FR 71247	12/22/2022	I
FENFLURAMINE	07-19-22	12-23-22	87 FR 78857	12/23/2022	IV --> NC
METHIOPROPAMINE (N-METHYL-1-(THIOPHEN-2-YL)PROPANE-2-AMINE	09-02-21	12-09-22	87 FR 75470	1/9/2023	I
1-(1-(1-(4-BROMOPHENYL)ETHYL)PIPERIDIN-4-YL)-1,3-DIHYDRO-2H-BENZO[D]IMIDAZOL-2-ONE (BRORPHINE)		03-06-23	88 FR 13692	4/5/2023	I
EUTYLONE (1-(1,3-BENZODIOXOL-5-YL)-2-(ETHYLAMINO)BUTAN-1-ONE)		04-10-23	88 FR 21101	4/10/2023	I
4-(2-CHLOROPHENYL)-2-ETHYL-9-METHYL-6H-THIENO[3,2-F][1,2,4]TRIAZOLO[4,3-A][1,4]DIAZEPINE (ETIZOLAM) *		07-26-23	88 FR 48112	7/26/2023	I
6-(2-CHLOROPHENYL)-1-METHYL-8-NITRO-4H-BENZO[F][1,2,4]TRIAZOLO[4,3-A][1,4]DIAZEPINE (CLONAZOLAM) *		07-26-23	88 FR 48112	7/26/2023	I
7-CHLORO-5-(2-CHLOROPHENYL)-1-METHYL-1,3-DIHYDRO-2H-BENZO[E][1,4]DIAZEPIN-2-ONE (DICLAZEPAM) *		07-26-23	88 FR 48112	7/26/2023	I
8-BROMO-6-(2-FLUOROPHENYL)-1-METHYL-4H-BENZO[F][1,2,4]TRAZOLO[4,3-A][1,4]DIAZEPINE (FLUBROMAZOLAM) *		07-26-23	88 FR 48112	7/26/2023	I
8-CHLORO-6-(2-FLUOROPHENYL)-1-METHYL-4H-BENZO[F][1,2,4]TRIAZOLO[4,3-A][1,4]DIAZEPINE (FLUALPRAZOLAM) *		07-26-23	88 FR 48112	7/26/2023	I
ANABOLIC STEROIDS (amended regulations consistent with DASCA; updated and moved specific listing to 21 CFR 1308.13(f))		08-01-23	88 FR 50036	8/1/2023	III
N,N-DIETHYL-2-(2-(4-METHOXYBENZYL)-5-NITRO-1H-BENZIMIDAZOL-1-YL)ETHAN-1-AMINE (METONITAZENE)		08-18-23	88 FR 56466	9/18/2023	I
ZURANOLONE		10-31-23	88 FR 74347	10/31/2023	IV
2',5'-DIMETHOXYFENTANYL (N-(1-(2,5-DIMETHOXYPHENETHYL)PIPERIDINE-4-YL)-N-PHENYLPROPIONAMIDE)		12-07-23	88 FR 85104	12/7/2023	I
3-FURANYL FENTANYL (N-(1-PHENTHYLPIPERIDIN-4-YL)-N-PHENYLFURAN-3-CARBOXAMIDE)		12-07-23	88 FR 85104	12/7/2023	I

*Scheduled under 21 USC 811(h)
**Extension of temporary control
NC = Not Controlled

SUBSTANCE	PROPOSAL PUBLICATION DATE	FINAL ORDER			CSA SCHEDULE
		PUBLICATION DATE	FEDERAL REGISTER CITATION	EFFECTIVE DATE	
ALPHA'-METHYL BUTYRYL FENTANYL (2-METHYL-N-(1-PHENETHYLPIPERIDIN-4-YL)-N-PHENYLBUTANAMIDE)		12-07-23	88 FR 85104	12/7/2023	I
ISOVALERY FENTANYL (3-METHYL-N-(1-PHENETHYLPIPERIDIN-4-YL)-N-PHENYLBUTANAMIDE)		12-07-23	88 FR 85104	12/7/2023	I
META-FLUOROFENTANYL (N-(3-FLUORPHENYL)-N-(1-PHENETHYLPIPERIDIN-4-YL)ISOBUTYRAMIDE)		12-07-23	88 FR 85104	12/7/2023	I
META-FLUOROISOBUTYRYL FENTANYL (N-(3-FLUOROPHENYL)-N-(1-PHENYLPIPERIDIN-4-YL)ISOBUTYRAMIDE)		12-07-23	88 FR 85104	12/7/2023	I
ORTHO-FLUOROFURANYL FENTANYL (N-(2-FLUOROPHENYL)-N-(1-PHENETHYLPIPERIDIN-4-YL)FURAN-2-CARBOXAMIDE)		12-07-23	88 FR 85104	12/7/2023	I
PARA-METHOXYFURANYL FENTANYL (N-(4-METHOXYPHENYL)-N-(1-PHENETHYLPIPERIDIN-4-YL)FURAN-2-CARBOXAMIDE)		12-07-23	88 FR 85104	12/7/2023	I
PARA-METHYLCYCLOPROPYL FENTANYL (N-(4-METHYLPHENYL)-N-(1-PHENYLPIPERIDIN-4-YL)CYCLOPROPANECARBOXAMIDE)		12-07-23	88 FR 85104	12/7/2023	I
4F-MDMB-BUTICA (METHYL 2-[[1-(4-FLUOROBUTYL)INDOLE-3-CARBONYL]AMINO]-3,3-DIMETHYL-BUTANOATE) *		12-12-23	88 FR 86040	12/12/2023	I
5F-EDMB-PICA (ETHYL 2-[[1-5-FLUOROPENTYL)INDOLE-3-CARBONYL]AMINO-3,3-DIMETHYL-BUTANOATE *		12-12-23	88 FR 86040	12/12/2023	I
ADB-4EN-PINACA (N-(1-AMINO-3,3-DIMETHYL-1-OXOBUTAN-2-YL)-1-(PENT-4-EN-1-YL)-1H-INDAZOLE-3-CARBOXAMIDE *		12-12-23	88 FR 86040	12/12/2023	I
CUMYL-PEGACLONE (5-PENTYL-2-(2-PHENYLPROPAN-2-YL)PYRIDO[4,3-B]INDOLE-1-ONE *		12-12-23	88 FR 86040	12/12/2023	I
MDMB-4EN-PINACA (METHYL 3,3-DIMETHYL-2-(1-(PENT-4-EN-1-YL)-1H-INDAZOLE-3-CARBOXAMIDO)BUTANOATE) *		12-12-23	88 FR 86040	12/12/2023	I
MMB-FUBICA (METHYL 2-(1-(4-FLUOROBENZYL)-1H-INDOLE-3-CARBOXAMIDO)-3-METHYL BUTANOATE *		12-12-23	88 FR 86040	12/12/2023	I
3-MMC (2-(METHYLAMINO)-1-(3-METHYLPHENYL)PROPAN-1-ONE)		12-13-23	88 FR 86266	12/13/2023	I
ADB-BUTINACA (N-(1-AMINO-3,3-DIMETHYL-1-OXOBUTAN-2-YL)-1-BUTYL-1H-INDAZOLE-3-CARBOXAMIDE)		12-13-23	88 FR 86266	12/13/2023	I
ALPHA-PIHP (4-METHYL-1-PHENYL-2-(PYRROLIDIN-1-YL)PENTAN-1-ONE)		12-13-23	88 FR 86266	12/13/2023	I
2-(2-(4-ETHOXYBENZYL)-1H-BENZIMIDAZOL-1-YL)-N,N-DIETHYLETHAN-1-AMINE (ETODESNITAZENE; ETAZENE)		04-11-24	89 FR 25514	4/11/2024	I
2-(4-ETHOXYBENZYL)-5-NITRO-1-(2-(PYRROLIDIN-1-YL)ETHYL)-1H-BENZIMIDAZOLE (N-PYRROLIDINO ETONITAZENE)		04-11-24	89 FR 25514	4/11/2024	I
N,N-DIETHYL-2-(5-NITRO-2-(4-PROPOXYBENZYL)-1H-BENZIMIDAZOL-1-YL)ETHAN-1-AMINE (PROTONITAZENE)		04-11-24	89 FR 25514	4/11/2024	I
2-(2-(4-BUTOXYBENZYL)-5-NITRO-1H-BENZIMIDAZOL-1-YL)-N,N-DIETHYLETHAN-1-AMINE (BUTONITAZENE) **		04-11-24	89 FR 25517	4/12/2024	I
N,N-DIETHYL-2-(2-(4-FLUOROBENZYL)-5-NITRO-1H-BENZIMIDAZOL-1-YL)ETHAN-1-AMINE (FLUNITAZENE) **		04-11-24	89 FR 25517	4/12/2024	I
N,N-DIETHYL-2-(2-(4-METHOXYBENZYL)-1H-BENZIMIDAZOL-1-YL)ETHAN-1-AMINE (METODESNITAZENE) **		04-11-24	89 FR 25517	4/12/2024	I

*Scheduled under 21 USC 811(h) **Extension of temporary control NC = Not Controlled SUBSTANCE	PROPOSAL PUBLICATION DATE	FINAL ORDER PUBLICATION DATE	FEDERAL REGISTER CITATION	EFFECTIVE DATE	CSA SCHEDULE
2-METHYL AP-237 (1-(2-METHYL-4-(3-PHENYLPROP-2-EN-1-YL)PIPERAZIN-1-YL)BUTAN-1-ONE)		03-15-24	89 FR 18793	4/15/2024	I
2-(4-ETHOXYBENZYL)-5-NITRO-1-(2-(PIPERIDIN-1-YL)ETHYL)-1H-BENZIMIDAZOLE (N-PIPERIDINYL ETONITAZENE; ETONITAZEPIPNE) *		07-29-24	89 FR 60817	7/29/2024	I
N-ETHYL-2-(2-(4-ISOPROPOXYBENZYL)-5-NITRO-1H-BENZIMIDAZOL-1-YL)ETHAN-1-AMINE (N-DESETHYL ISOTONITAZENE) *		07-29-24	89 FR 60817	7/29/2024	I
2-(2-(4-BUTOXYBENZYL)-5-NITRO-1H-BENZIMIDAZOL-1-YL)-N,N-DIETHYLETHAN-1-AMINE (BUTONITAZENE)		10-25-24	89 FR 85047	10/25/2024	I
N,N-DIETHYL-2-(2-(4-FLUOROBENZYL)-5-NITRO-1H-BENZIMIDAZOL-1-YL)ETHAN-1-AMINE (FLUNITAZENE)		10-25-24	89 FR 85047	10/25/2024	I
N,N-DIETHYL-2-(2-(4-METHOXYBENZYL)-1H-BENZIMIDAZOL-1-YL)ETHAN-1-AMINE (METODESNITAZENE)		10-25-24	89 FR 85047	10/25/2024	I
ETHYLPHENIDATE (ETHYL 2-PHENYL-2-(PIPERIDIN-2-YL)ACETATE)	09-22-23	10-22-24	89 FR 84281	11/21/2024	I
BETA-METHYLACETYL FENTANYL (N-PHENYL-N-(1-(2-PHENYLPROPYL)PIPERIDIN-4-YL)ACETAMIDE) ** (Prior control under Temporary Order for Fentanyl-Related Substances: See 83 FR 5188 02/06/2018)		12-30-24	89 FR 106311	12/31/2024	I
META-FLUOROFURANYL FENTANYL (N-3-FLUOROPHENYL)-N-(1-PHENETHYLPIPIERIDIN-4-YL)FURAN-2-CARBOXAMIDE ** (Prior control under Temporary Order for Fentanyl-Related Substances: See 83 FR 5188 02/06/2018)		12-30-24	89 FR 106311	12/31/2024	I
ORTHO-CHLOROFENTANYL (N-(2-CHLOROPHENYL)-N-(1-PHENETHYLPIPERIDIN-4-YL)PROPIONAMIDE ** (Prior control under Temporary Order for Fentanyl-Related Substances: See 83 FR 5188 02/06/2018)		12-30-24	89 FR 106311	12/31/2024	I
ORTHO-METHYLCYCLOPROPYLFENTANYL (N-2-METHYLPHENYL)-N-(1-PHENETHYLPIPERIDIN-4-YL)CYLCOPROPANECARBOXAMIDE) ** (Prior control under Temporary Order Fentanyl-Related Substances: See 83 FR 5188 02/06/2018)		12-30-24	89 FR 106311	12/31/2024	I
PARA-CHLOROFENTANYL (N-4-CHLOROPHENYL)-N-(1-PHENETHYLPIPERIDIN-4-YL)PROPIONAMIDE) ** (Prior control under Temporary Order Fentanyl-Related Substances: See 83 FR 5188 02/06/2018)		12-30-24	89 FR 106311	12/31/2024	I
PARA-FLUORO VALERYL FENTANYL (N-(4-FLUOROPHENYL)-N-(1-PHENETHYLPIPERIDIN-4-YL)PENTANAMIDE) ** (Prior control under Temporary Order Fentanyl-Related Substances: See 83 FR 5188 02/06/2018)		12-30-24	89 FR 106311	12/31/2024	I
TETRAHYDROTHIOFURANYL FENTANYL (N-(1-PHENETHYLPIPERIDIN-4-YL)-N-PHENYLTETRAHYDROTHIOPHENE-2-CARBOXAMIDE) ** (Prior control under Temporary Order Fentanyl-Related Substances: See 83 FR 5188 02/06/2018)		12-30-24	89 FR 106311	12/31/2024	I

(i) Violation as specified (1988), maximum from $63,991 to $65,653.

(ii) Violation as specified (1988), maximum from $30,715 to $31,513.

(iii) Otherwise violation (1978), maximum from $2,103 to $2,158.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from $230,464 to $236,451.

(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,[5] violation, maximum from $230,464 to $236,451.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,[6] violation, maximum from $230,464 to $236,451.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from $32,942 to $33,798.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from $823 to $844.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,[7] violation, maximum from $230,464 to $236,451.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,[8] violation, maximum from $230,464 to $236,451.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from $1,394 to $1,430; maximum from $13,946 to $14,308.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,[9] violation, maximum from $230,464 to $236,451.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,[10] violation, maximum from $230,464 to $236,451.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,[11] violation, maximum from $230,464 to $236,451.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from $200,174 to $205,375,

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,[12] violation, maximum from $230,464 to $236,451.

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,[13] violation, maximum from $230,464 to $236,451.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,[14] violation, maximum from $230,464 to $236,451.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from $35,574 to $36,498.

(ii) Subsequent violation, maximum from $105,105 to $107,836.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from $90,702 to $93,058.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from $90,702 to $93,058.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012,[15] violation, maximum from $230,464 to $236,451.

(33) 16 U.S.C. 7407(b), Port State Measures Agreement Act of 2015,[16] violation, maximum from $230,464 to $236,451.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act,[17] violation, maximum from $230,464 to $236,451.

(35) 16 U.S.C. 7705, Ensuring Access to Pacific Fisheries Act,[18] violation, maximum from $230,464 to $236,451.

(36) 16 U.S.C. 7805, Ensuring Access to Pacific Fisheries Act,[19] violation, maximum from $230,464 to $236,451.

(37) 16 U.S.C. 1857 note, James M. Inhofe National Defense Authorization Act for Fiscal Year 2023,[20] violation, maximum from $230,464 to $236,451.

(g) *National Technical Information Service.* 42 U.S.C. 1306c(c), Bipartisan Budget Act of 2013 (2013), violation, minimum from $1,196 to $1,227; maximum total penalty on any person for any calendar year, excluding willful or intentional violations, from $298,887 to $306,652.

(h) *Office of the Under Secretary for Economic Affairs.* 15 U.S.C. 113, Concrete Masonry Products Research, Education, and Promotion Act of 2018 (2018), violation, maximum from $5,162 to $5,296.

§ 6.4 Effective date of adjustments for inflation to civil monetary penalties.

The Department of Commerce's 2025 adjustments for inflation made by § 6.3, of the civil monetary penalties there specified, are effective on January 15, 2025, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.3, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to January 15, 2025 as provided in § 6.5.

§ 6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to the Department of Commerce's civil monetary penalties annually, which shall take effect not later than January 15, notwithstanding section 553 of title 5, United States Code.

[FR Doc. 2024–31310 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–DP–P

[5] See footnote 1.

[6] See footnote 1.

[7] See footnote 1.

[8] See footnote 1.

[9] See footnote 1.

[10] See footnote 1.

[11] See footnote 1.

[12] See footnote 1.

[13] See footnote 1.

[14] See footnote 1.

[15] See footnote 1.

[16] See footnote 1.

[17] See footnote 1.

[18] See footnote 1.

[19] See footnote 1.

[20] See footnote 1.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1457]

Schedules of Controlled Substances: Extension of Temporary Placement of Seven Specific Fentanyl-Related Substances in Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary rule; temporary scheduling order; extension.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to extend the temporary schedule I status of seven specific fentanyl-related substances, as identified in this order, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers. These seven substances fall within the definition of fentanyl-related substances set forth in the February 6, 2018, temporary scheduling order. Through the Temporary Reauthorization and Study of Emergency Scheduling of Fentanyl Analogues Act, which became law on February 6, 2020, Congress extended the temporary control of fentanyl-related substances until May 6, 2021. This temporary order was subsequently extended multiple times, most recently on December 29, 2022, through the Consolidated Appropriations Act, 2023, which extended the order until December 31, 2024. This temporary order will extend

the temporary scheduling of seven specific fentanyl-related substances for one year, or until the permanent scheduling action for these substances is completed, whichever occurs first.

DATES: This temporary scheduling order, which extends schedule I control of seven specific substances covered by an order (83 FR 5188, February 6, 2018), is effective December 31, 2024, and expires on December 31, 2025. If DEA publishes a final rule making this scheduling action permanent, this order will expire on the effective date of that rule, if the effective date is earlier than December 31, 2025.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: In this order, the Drug Enforcement Administration (DEA) extends the temporary scheduling of the following seven controlled substances in schedule I of the Controlled Substances Act (CSA), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- *para*-chlorofentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide),
- *ortho*-chlorofentanyl (*N*-(2-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide),
- *meta*-fluorofuranyl fentanyl (*N*-(3-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)furan-2-carboxamide),
- *ortho*-methylcyclopropyl fentanyl (*N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide),
- *beta*-methylacetyl fentanyl (*N*-phenyl-*N*-(1-(2-phenylpropyl)piperidin-4-yl)acetamide),
- tetrahydrothiofuranyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrothiophene-2-carboxamide),
- *para*-fluoro valeryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)pentanamide).

Background and Legal Authority

On February 6, 2018, pursuant to 21 U.S.C. 811(h)(1), DEA published an order in the **Federal Register** temporarily placing fentanyl-related substances, as defined in that order, in schedule I of the CSA based upon a finding that these substances pose an imminent hazard to the public safety.[1] As discussed below, the seven substances named in this rule meet the existing definition of fentanyl-related substances as they are not otherwise controlled in any other schedule (i.e., not included under another DEA Controlled Substance Code Number) and are structurally related to fentanyl by one or more of the five modifications listed under the definition. Additionally, as required by 21 U.S.C. 811(h)(2), these specific seven substances have no exemption or approval in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). That temporary order was effective upon the date of publication. Pursuant to 21 U.S.C. 811(h)(2), the temporary control of fentanyl-related substances, a class of substances as defined in the order, as well as the seven specific substances already covered by that order, was set to expire on February 6, 2020. However, on February 6, 2020, as explained in DEA's April 10, 2020 correcting amendment,[2] Congress extended that expiration date until May 6, 2021, by enacting the Temporary Reauthorization and Study of the Emergency Scheduling of Fentanyl Analogues Act.[3] This temporary order was subsequently extended multiple times, most recently on December 29, 2022, through the Consolidated Appropriations Act, 2023,[4] which extended the order until December 31, 2024. Consequently, the temporary control of these seven substances will remain in effect until December 31, 2024, unless DEA permanently places them in schedule I prior to that date.

As defined in the February 6, 2018 temporary scheduling order, fentanyl-related substances include any substance not otherwise controlled in any schedule (*i.e.*, not included under any other Administration Controlled Substance Code Number) that is structurally related to fentanyl by one or more of the following modifications:

(A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(B) substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(C) substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(D) replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(E) replacement of the *N*-propionyl group by another acyl group.

Further, according to the temporary scheduling order, the existence of a substance with any one, or any combination, of the above-mentioned modifications would meet the structural requirements of the definition of fentanyl-related substance. The present seven substances were not otherwise controlled under any schedule at the time of the temporary order and are covered by the order due to having the following modifications:

1. *para*-chlorofentanyl: substitution on the aniline ring (meets definition for modification D);

2. *ortho*-chlorofentanyl: substitution on the aniline ring (meets definition for modification D);

3. *meta*-fluorofuranyl fentanyl: substitution on the aniline ring and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications D and E);

4. *ortho*-methylcyclopropyl fentanyl: substitution on the aniline ring and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications D and E);

5. *beta*-methylacetyl fentanyl: substitution on the phenethyl group with an alkyl group and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications B and E);

6. tetrahydrothiofuranyl fentanyl: replacement of the *N*-propionyl group with another acyl group (meets definition for modification E);

7. *para*-fluoro valeryl fentanyl: substitution on the aniline ring and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications D and E).

As noted above, these specific seven substances have no exemption or approval in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). As explained above, the temporary control of these seven substances will remain in effect until December 31, 2024, unless DEA permanently places them in schedule I prior to that date. However, the CSA also provides that during the pendency of proceedings to permanently schedule a substance under 21 U.S.C. 811(a)(1), such temporary scheduling may be

---

[1] *Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I*, 83 FR 5188 (Feb. 6, 2018).

[2] *Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I; Correction*, 85 FR 20155 (Apr. 10, 2020).

[3] Public Law 116–114, sec. 2, 134 Stat. 103.

[4] Public Law 117–328, division O, title VI, sec. 601.

extended for up to one year.[5] Proceedings under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services,[6] or on the petition of any interested party.[7]

The Administrator of DEA, on her own motion pursuant to 21 U.S.C. 811(a), has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule these seven fentanyl-related substances: *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl. DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for these substances. On April 3, 2023, DEA submitted a request to HHS to provide DEA with a scientific and medical evaluation of available information and a scheduling recommendation for these seven fentanyl-related substances (*para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl) in accordance with 21 U.S.C. 811(b) and (c).

Upon evaluating the scientific and medical evidence, on October 25, 2024, HHS provided DEA with a scientific and medical evaluation and scheduling recommendation to place these seven fentanyl-related substances in schedule I of the CSA.

Upon receipt of the scientific and medical evaluation and scheduling recommendation from HHS, DEA reviewed the documents, and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of these seven fentanyl-related substances in accordance with 21 U.S.C. 811(c). Based on this review, as discussed elsewhere in this issue of the **Federal Register**, DEA is publishing a notice of proposed rulemaking for the placement of these seven fentanyl-related substances in schedule I of the CSA. If the proposed rule is finalized, DEA will publish a final rule in the **Federal Register**.

Pursuant to 21 U.S.C. 811(h)(2), the Administrator orders that the temporary scheduling of seven substances, covered by the February 6, 2018 temporary scheduling order, be extended for one year, or until the permanent scheduling proceeding is completed, whichever occurs first. These seven substances are: *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers.

In accordance with this temporary scheduling order, the schedule I requirements for handling *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl, including their isomers, esters, ethers, salts and salts of isomers, esters, ethers, will remain in effect for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

Regulatory Matters

The CSA provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety.[8] This provision of the CSA allows the Attorney General, by order, to schedule a substance in schedule I on a temporary basis.[9] It also provides that the temporary scheduling of a substance shall expire at the end of two years from the date of the issuance of the order scheduling such substance, except that the Attorney General may, during the pendency of proceedings to permanently schedule the substance, extend the temporary scheduling for up to one year.

To the extent that 21 U.S.C. 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued and extended, the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this extension of the temporary scheduling action.[10] The APA expressly differentiates between orders and rules, as it defines an "order" to mean a "final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making*." [11] This contrasts with permanent scheduling actions, which are subject to formal rulemaking procedures done "on the record after opportunity for a hearing," and final decisions that conclude the scheduling process and are subject to judicial review.[12] The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an order instead of proceeding by rulemaking. Given that Congress specifically requires the Attorney General to follow rulemaking procedures for other kinds of scheduling actions,[13] it is noteworthy that, in subsection 811(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even if this action were subject to 5 U.S.C. 553, the Administrator finds that there is good cause to forgo the notice-and-comment requirements and the delayed effective date requirements of such section, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety that these substances would present if scheduling expired, for the reasons expressed in the temporary scheduling order.[14]

Further, DEA believes that this order extending the temporary scheduling action is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed

[5] Though DEA has used the term "final order" with respect to temporary scheduling orders in the past, this document adheres to the statutory language of 21 U.S.C. 811(h), which refers to a "temporary scheduling order." No substantive change is intended.

[6] Because the Secretary of the Department of Health and Human Services has delegated to the Assistant Secretary for Health of the Department of Health and Human Services the authority to make domestic drug scheduling recommendations, for purposes of this temporary order, all subsequent references to "Secretary" have been replaced with "Assistant Secretary."

[7] 21 U.S.C. 811(a).

[8] 21 U.S.C. 811(h).

[9] *Id.*

[10] Even if this action were subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

[11] 5 U.S.C. 551(6) (emphasis added).

[12] 21 U.S.C. 811(a) and 877.

[13] *See* 21 U.S.C. 811(a).

[14] *See Schedules of Controlled Substances: Temporary Placement of Butonitazene, Etodesnitazene, Flunitazene, Metodesnitazene, Metonitazene, N-Pyrrolidino etonitazene, and Protonitazene in Schedule I*, 87 FR 21556 (Apr. 12, 2022).

rulemaking. Therefore, in this instance, since DEA believes this temporary scheduling action is not a "rule," it is not subject to the requirements of the RFA when issuing this temporary action.

Additionally, in accordance with the principles of Executive Orders (E.O.) 12866, 13563, and 14094, this action is not a significant regulatory action. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866, sec. 3(f), as amended by E.O. 14094, sec. 1(b), provides the definition of a "significant regulatory action," requiring review by the Office of Management and Budget. Because this is not a rulemaking action, this is not a significant regulatory action as defined in section 3(f) of E.O. 12866.

This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the CRA, "any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines." [15]

It is in the public interest to maintain the temporary placement of these seven substances in schedule I because they pose a public health risk. These substances are: *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl. The temporary scheduling action was taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h), temporary scheduling orders are not subject to notice and comment rulemaking procedures. The CSA frames temporary scheduling actions as orders rather than rules to ensure that the process moves swiftly, and this extension of the temporary scheduling order for these seven substances continues to serve that purpose. For the same reasons that underlie 21 U.S.C. 811(h), that is, the need to keep these seven substances in schedule I because they pose an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of this extension of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order extending the temporary scheduling order for seven specific substances, currently covered under the definition of fentanyl-related substances in the temporary order, shall take effect immediately upon its publication.

DEA has submitted a copy of this temporary order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808, because, as noted above, this action is an order, not a rule.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 19, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

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, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

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

■ 2. In § 1308.11, add paragraphs (h)(70) through (76) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(70) *N*-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)acetamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: *beta*-methylacetyl fentanyl 9868

(71) *N*-(3-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)furan-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: *meta*-Fluorofuranyl fentanyl) 9871

(72) *N*-(2-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: *ortho*-Chlorofentanyl) 9828

(73) *N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: *ortho*-methylcyclopropylfentanyl) 9849

(74) *N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: *para*-Chlorofentanyl) 9818

(75) *N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)pentanamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: *para*-fluoro valeryl fentanyl 9870

(76) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrothiophene-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other names: tetrahydrothiofuranyl fentanyl; tetrahydrothiophene fentanyl 9869

[15] 5 U.S.C. 808(2).

[FR Doc. 2024–31130 Filed 12–27–24; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10020]

RIN 1545–BI22

Reissuance of State or Local Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that address when tax-exempt bonds are treated as retired for certain Federal income tax purposes. The final regulations are necessary to unify and to clarify existing guidance on this subject. The final regulations affect State and local governments that issue tax-exempt bonds.

DATES:

Effective date: These regulations are effective on December 30, 2024.

Applicability date: For dates of applicability, *see* § 1.150–3(f).

FOR FURTHER INFORMATION CONTACT: Zoran Stojanovic, (202) 317–6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 150 and amending the regulations under section 1001 of the Internal Revenue Code (Code) to provide rules for determining when tax-exempt bonds are treated as retired for purposes of sections 103 and 141 through 150 of the Code (final regulations).

These final regulations are promulgated under the express delegation of authority in section 7805(a) of the Code, which authorizes the Secretary of the Treasury or her delegate to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

On December 31, 2018, a notice of proposed rulemaking (REG–141739–08) regarding retirement of tax-exempt bonds was published in the **Federal Register** (83 FR 67701) (proposed regulations). No public hearing was requested or held. Five public comments responding to the proposed regulations were received and are available at *https://www.regulations.gov* or upon request. After careful consideration of all the written comments, the proposed regulations are adopted as amended by this Treasury decision in response to such comments as described in the *Summary of Comments and Explanation of Revisions.*

1. Overview

In general, under section 103, interest received by the holders of certain bonds issued by State and local governments is exempt from Federal income tax. To qualify for the tax exemption, a bond issued by a State or local government must satisfy various eligibility requirements under sections 141 through 150 at the time of issuance of the bond. If the issuer and holder agree after issuance to modify the terms of a tax-exempt bond significantly, the original bond may be treated as having been retired and exchanged for a newly issued, modified bond. Similarly, if the issuer or its agent acquires and resells the bond, the bond may be treated as having been extinguished upon acquisition and replaced upon resale with a newly issued bond.

The term "reissuance" commonly refers to the effect of a transaction in which a new bond is deemed to be issued in place of an old bond as a result of retirement of the old bond pursuant to such an exchange or extinguishment. In the case of a reissuance, the reissued bond must be retested for qualification under sections 103 and 141 through 150. The reissuance of an issue of tax-exempt bonds may result in various negative consequences to the issuer, such as changes in yield for purposes of the arbitrage investment yield restrictions under section 148(a), acceleration of arbitrage rebate payment obligations under section 148(f), and change-in-law risk.

2. Tender Option Bonds

Tender option bonds and variable rate demand bonds (collectively, tender option bonds) have special features that present reissuance questions. Specifically, tender option bonds have original terms that provide for a tender option interest rate mode, as described in this paragraph. Issuers of tax-exempt bonds often preauthorize several different interest rate modes in the bond documents and retain an option to switch interest rate modes under parameters set forth in the bond documents. During a tender option mode, tender option bonds have short-term interest rates that are reset periodically at various short-term intervals (typically, every seven days) based on the current market rate necessary to remarket the bonds at par. In connection with each resetting of the interest rate, the holder of a tender option bond has a right or requirement to tender the bond back to the issuer or its agent for purchase at par. Tender option bonds generally are structured with these short-term features supported by put options to enable the bonds to be eligible for purchase by tax-exempt money market funds pursuant to 17 CFR 270.2a–7 (Rule 2a–7 under the Investment Company Act of 1940).

Tender option bonds also may have interest rate mode conversion options that permit the issuer or conduit borrower to change the interest rate mode on the bonds from a tender option mode to another short-term interest rate mode or to a fixed interest rate to maturity. At the time of a conversion to another interest rate mode, the holder of a tender option bond typically has the right or requirement to tender the bond for purchase at par.

Tender option bonds generally have third-party liquidity facilities from banks or other liquidity providers to ensure that there is sufficient cash to repurchase the bonds upon a holder's tender, and they also commonly have credit enhancement from bond insurers or other third-party guarantors. Upon a holder's exercise of its tender rights in connection with either a resetting of the interest rate during a tender option mode or a conversion to another interest rate mode, a remarketing agent or a liquidity provider typically will acquire the bonds subject to the tender and resell the bonds either to the same bondholders or to others willing to purchase such bonds.

3. Existing Guidance

To address reissuance questions related to tax-exempt bonds, on December 27, 1988, the Department of the Treasury (Treasury Department) and the IRS published Notice 88–130, 1988–2 CB 543, which provides rules for determining when a tax-exempt bond is retired for purposes of sections 103 and 141 through 150. Notice 88–130 provides in part that a tax-exempt bond is retired when there is a change to the terms of the bond that results in a disposition of the bond for purposes of section 1001. In addition, Notice 88–130 provides special rules for retirement of certain tender option bonds that meet a definition of the term "qualified tender bond."