RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 25]

Schedules of Controlled Substances

The Department of Health (Department) amends the schedules of controlled substances under the powers and duties contained in The Controlled Substances, Drug, Device and Cosmetic Act (act) (P. L. 233, No. 64) (35 P. S. §§ 780-101—780-144). The Department amends § 25.72 (relating to schedules of controlled substances) to schedule the substances 1-(3-trifluoromethylphenyl) Piperazine (TFMPP), N-Benzylpiperazine (BZP), Alpha-Methyltryptamine (AMT), 2, 5 Dimethoxy-4-(N)-Propylthiophenethylamine, and 5-Methoxy-N, N-Diisopropyltryptamine (5-MEO-DIPT) as Schedule I substances to read as set forth in Annex A.

A. *Purpose of the Final-Form Rulemaking*

The act recognizes that there is a need to control substances which have potential for abuse while also recognizing that some of those substances have medical uses. The act provides for a system of five schedules of controlled substances as a means of grouping potentially dangerous substances based on their differing potentials for abuse and on their potential for medical use. Penalties for illegal use of the controlled substances vary according to the schedule on which the substance is listed. The health and safety of the public is protected by having a substance placed on the proper schedule. Additionally, proper scheduling ensures appropriate enforcement when a substance is abused or otherwise used illegally.

The act requires that a controlled substance be placed in Schedule I when there is: (1) a high potential for abuse; (2) no currently accepted medical use in the United States; and (3) a lack of accepted safety for use under medical supervision.

The Drug, Device and Cosmetic Board (Board) met on April 21, 2004. The meeting notice was published at 34 Pa.B. 2135 (April 17, 2004).

The Board heard the petitions of the Office of Attorney General which requested that 1-(3-trifluoromethylphenyl) Piperazine (TFMPP), N-Benzylpiperazine (BZP), Alpha-Methyltryptamine (AMT), 2, 5 Dimethoxy-4-(N)-Propylthiophenethylamine, and 5-Methoxy-N, N-Diisopropyltryptamine (5-MEO-DIPT) be scheduled as Schedule I controlled substances.

These substances are currently scheduled by the Federal Government as Schedule I controlled substances. The fact that these substances are not scheduled at the State level hinders law enforcement agencies in prosecution for illegal sale and illegal possession. These substances are abused and have a high potential for abuse. There is no currently accepted medical use for these substances and there is a lack of accepted safety for use under medical supervision. The Board approved a motion to provide written advice to the Secretary to add these substances to Schedule I of controlled substances. The Secretary then directed that the substances be scheduled.

The final-form rulemaking schedules 1-(3-trifluoromethylphenyl) Piperazine (TFMPP), N-Benzylpiperazine (BZP), Alpha-Methyltryptamine (AMT), 2, 5 Dimethoxy-4-(N)-Propylthiophenethylamine, and 5-Methoxy-N,N-Diisopropyltryptamine (5-MEO-DIPT) as Schedule I substances.

B. *Requirements of the Final-Form Rulemaking*

The final-form rulemaking schedules substances on the lists of schedules of controlled substances as follows:

The substances 1-(3-trifluoromethylphenyl) Piperazine (TFMPP), N-Benzylpiperazine (BZP), Alpha-Methyltryptamine (AMT), 2, 5 Dimethoxy-4-(N)-Propylthiophenethylamine, and 5-Methoxy-N, N-Diisopropyltryptamine (5-MEO-DIPT) will be scheduled as Schedule I substances.

C. *Affected Persons*

The general public will benefit from the scheduling of these substances because it allows for State law enforcement officials to begin to work to remove these substances from this Commonwealth and allows for enforcement and control of the drug abuse problems in this Commonwealth. State law enforcement officials will also benefit in that they will be better equipped to enforce the laws to protect the citizens of this Commonwealth.

D. *Fiscal Impact*

This final-form rulemaking has no measurable fiscal impact on the Commonwealth, local government, the private sector or the general public.

E. *Paperwork Requirements*

A system already exists for the handling of controlled substances under the act and the final-form rulemaking does not increase paperwork.

F. *Effective Date/Sunset Date*

The final-form rulemaking becomes effective immediately upon publication. There is no sunset date. The final-form rulemaking will be continually monitored and updated as needed.

G. *Statutory Authority*

The amendments to the schedules of controlled substances are adopted under sections 3 and 4 of the act (35 P. S. §§ 780-103 and 780-104). The amendments are also adopted under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Section 3 of the act provides that the Secretary shall control all substances listed in Schedules I—V of the act. Subsection 3(c) of the act provides that the Secretary shall not reschedule any controlled substance unless specifically authorized by the Board to do so. Subsection 3(a) of the act provides that the Secretary may add a substance as a controlled substance, and that before doing so, shall request advice in writing from the Board as to whether a substance should be added as a controlled substance. The Secretary sought that advice and the Board provided it following their April 21, 2004, meeting. The Board recommended that the substances 1-(3-trifluoromethylphenyl) Piperazine (TFMPP), N-Benzylpiperazine (BZP), Alpha-Methyl-tryptamine (AMT), 2, 5 Dimethoxy-4-(N)-Propylthiophen-ethylamine, and 5-Methoxy-N,N-Diisopropyltryptamine (5-MEO-DIPT) be added as Schedule I controlled substances. The Secretary then decided that these substances be scheduled.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 13, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 5807 (October 23, 2004), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 30, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC effective November 30, 2005.

I. *Contact Person*

Questions regarding this final-form rulemaking should be submitted to Carol Williams, Director, Bureau of Community Program Licensure and Certification, Department of Health, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665. Persons with a disability who require an alternative format of the final-form rulemaking (for example, large print, audiotape or Braille) should contact Carol Williams at (717) 783-8665 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

J. *Findings*

The Department finds that:

(1) Public notice of the intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law.

(3) The adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for the administration of the authorizing statutes.

K. *Order*

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 28 Pa. Code Chapter 25, are amended by amending § 25.72 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(c) The Secretary shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review as required by law.

(d) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 6852 (December 17, 2005).)

Fiscal Note: Fiscal Note 10-177 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 28. HEALTH AND SAFETY

PART III. PREVENTION OF DISEASES

CHAPTER 25. CONTROLLED SUBSTANCES, DRUGS, DEVICES AND COSMETICS

Subchapter A. CONTROLLED SUBSTANCES, DRUGS, DEVICES AND COSMETICS

SCHEDULES OF CONTROLLED SUBSTANCES

§ 25.72. Schedules of controlled substances.

* * * * *

(b) *Schedule I.* In determining that a substance comes within this schedule, the Secretary will find: a high potential for abuse; no currently accepted medical use in the United States; a lack of accepted safety for use under medical supervision. The following controlled substances are included in this schedule:

* * * * *

(6) Unless specifically excepted or unless listed in another schedule, a material, compound, mixture or preparation which contains any quantity of the following substances including the salts, isomers and salts of isomers:

* * * * *

(xxix) 1-(3-trifluoromethylphenyl) Piperazine (TFMPP)

(xxx) N-Benzylpiperazine (BZP)

(xxxi) Alpha-Methyltryptamine (AMT)

(xxxii) 2-5 Dimethoxy-4-(N)-Propylthiophenethylamine (2C-T-7)

(xxxiii) 5-Methoxy-N, N-Diisopropyltryptamine (5-MEO-DIPT)

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[Pa.B. Doc. No. 06-423. Filed for public inspection March 17, 2006, 9:00 a.m.]