

The Connecticut General Assembly

Legislative Commissioners' Office

Edwin J. Maley, Jr.
Commissioner
William A. Hamzy
Commissioner

Louise M. Nadeau
Director



Legislative Office Building
Suite 5500
Hartford, Connecticut
06106-1591
(860) 240-8410
fax (860) 240-8414
e-mail: lco@cga.ct.gov

Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: November 7, 2018

Regulation No:	E2018-1
Agency:	Department of Consumer Protection
Subject Matter:	Federally Approved Medications Containing Marijuana Products
Statutory Authority: (copy attached)	21a-243, 4-168(g)

For the Committee's Information:

1. The proposed emergency regulation was submitted to the committee by the Department of Consumer Protection on October 23, 2018. If approved by the committee, the proposed regulation becomes effective when posted on the eRegulations system by the office of the Secretary of the State and shall remain effective for a period not to exceed one hundred eighty days. Failure of the committee to meet to act on the regulation by November 7, 2018 shall be deemed an approval pursuant to section 4-168(g)(2) of the general statutes.

2. It is unclear whether the text of the proposed emergency regulation is authorized under section 21a-243 of the general statutes. Section 21a-243(e) requires the commissioner to adopt regulations reclassifying marijuana as a schedule II controlled substance. Section 21a-243(g) provides that if there is a conflict between the state and federal schedules, the federal schedule will prevail, except as provided in Section 21a-243(e). The proposed

regulation refers to the reclassification of "any marijuana product that has been approved by the federal Food and Drug Administration...to have a medical use and is reclassified in any schedule of unscheduled substances or reclassified...or unscheduled by the federal Drug Enforcement Administration...". Since "marijuana product" is undefined, it is unclear whether "marijuana product" refers to substances that are defined as "marijuana" in Section 21a-240(29) of the general statutes and thus required under Section 21a-243 to be classified as schedule II controlled substances. Before submitting this regulation as a permanent regulation, the agency should consider requesting the legislature to amend Sections 21a-243(e) and (g) of the general statutes to clarify that the requirement that marijuana be classified as a schedule II controlled substance does not apply to marijuana products such as those described in the proposed regulation and that the federal schedule prevails when it is less restrictive concerning a marijuana product.

Substantive Concerns:

Technical Corrections:

1. On page 2, in Section 21a-243-8(g), in the first line, "(g)" should not be underlined, for consistency with the existing regulation.
2. On page 2, in Section 21a-243-8(g), in the first line, "(1)" should be inserted before "including"; on page 3, ". Any" should be "[.], and (2) excepting any" and "shall be specifically excepted and shall adopt" should be ". Any marijuana product described in subdivision (2) of this subsection shall be included in", for clarity and consistency.
3. On page 2, in Section 21a-243-8(g), in the last line, "federal" should be inserted before "Drug", for consistency.

Recommendation:

<input checked="" type="checkbox"/>	Approval in whole
<input checked="" type="checkbox"/>	with technical corrections
	with deletions
	with substitute pages
	Disapproval in whole or in part

Reviewed by: Richard Hanratty / Shannon McCarthy

Date: November 2, 2018

Sec. 21a-243. (Formerly Sec. 19-451). Regulations. Schedules of controlled substances. (a) The Commissioner of Consumer Protection shall adopt regulations for the efficient enforcement and operation of sections 21a-244 to 21a-282, inclusive.

(b) The Commissioner of Consumer Protection may, so far as may be consistent with sections 21a-244 to 21a-282, inclusive, adopt the regulations existing under the federal Controlled Substances Act and pertinent regulations existing under the federal food and drug laws and conform regulations adopted hereunder with those existing under the federal Controlled Substances Act and federal food and drug laws.

(c) The Commissioner of Consumer Protection, acting upon the advice of the Commission of Pharmacy, may by regulation designate, after investigation, as a controlled substance, a substance or chemical composition containing any quantity of a substance which has been found to have a stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and having a tendency to promote abuse or physiological or psychological dependence or both. Such substances are classifiable as amphetamine-type, barbiturate-type, cannabis-type, cocaine-type, hallucinogenic, morphine-type and other stimulant and depressant substances, and specifically exclude alcohol, caffeine and nicotine. Substances which are designated as controlled substances shall be classified in schedules I to V by regulations adopted pursuant to subsection (a) of this section.

(d) The Commissioner of Consumer Protection may by regulation change the schedule in which a substance classified as a controlled substance in schedules I to V of the controlled substance scheduling regulations is placed. On or before December 15, 1986, and annually thereafter, the commissioner shall submit a list of all such schedule changes to the chairmen and ranking members of the joint standing committee of the General Assembly having cognizance of matters relating to public health.

(e) Notwithstanding the provisions of subsections (a) to (d), inclusive, of this section, not later than January 1, 2013, the Commissioner of Consumer Protection shall submit amendments to sections 21a-243-7 and 21a-243-8 of the regulations of Connecticut state agencies to the standing legislative regulation review committee to reclassify marijuana as a controlled substance in schedule II under the Connecticut controlled substance scheduling regulations.

(f) A new or amended regulation under this chapter shall be adopted in accordance with the provisions of chapter 54.

(g) In the event of any inconsistency between the contents of schedules I, II, III, IV and

V of the controlled substance scheduling regulations and schedules I, II, III, IV and V of the federal Controlled Substances Act, as amended, the provisions of the federal act shall prevail, except (1) when the provisions of the Connecticut controlled substance scheduling regulations place a controlled substance in a schedule with a higher numerical designation, schedule I being the highest designation, or (2) as provided in subsection (e) of this section.

(h) When a drug that is not a controlled substance in schedule I, II, III, IV or V, as designated in the Connecticut controlled substance scheduling regulations, is designated to be a controlled substance under the federal Controlled Substances Act, such drug shall be considered to be controlled at the state level in the same numerical schedule for a period of two hundred forty days from the effective date of the federal classification.

(i) The Commissioner of Consumer Protection shall, by regulation adopted pursuant to this section, designate the following substances, by whatever official, common, usual, chemical or trade name designation, as controlled substances and classify each such substance in the appropriate schedule:

- (1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018);
- (2) 1-butyl-3-(1-naphthoyl)indole (JWH-073);
- (3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);
- (4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497);
- (5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue);
- (6) Salvia divinorum; and
- (7) Salvinorum A.

(j) Notwithstanding the provisions of subsection (c) of this section, the Commissioner of Consumer Protection shall designate the following substances, by whatever official, common, usual, chemical or trade name designation, as controlled substances in schedule I of the controlled substances scheduling regulations:

- (1) Mephedrone (4-methylmethcathinone); and
- (2) MDPV (3,4-methylenedioxypropylone).

Sec. 21a-240(29) of the 2018 Supplement

(29) "Marijuana" means all parts of any plant, or species of the genus cannabis or any infra specific taxon thereof, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Marijuana does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, the sterilized seed of such plant which is incapable of germination, or industrial hemp, as defined in 7 USC 5940, as amended from time to time. Included are cannabimon, cannabimol or cannabidiol and chemical compounds which are similar to cannabimon, cannabimol or cannabidiol in chemical structure or which are similar thereto in physiological effect, and which show a like potential for abuse, which are controlled substances under this chapter unless modified;

Sec. 4-168(g). Emergency regulations.

(g) (1) An agency may proceed to adopt an emergency regulation in accordance with this subsection without prior notice, public comment period or hearing or upon any abbreviated notice, public comment period and hearing that it finds practicable if (A) the agency finds that adoption of a regulation upon fewer than thirty days' notice is required (i) due to an imminent peril to the public health, safety or welfare or (ii) by the Commissioner of Energy and Environmental Protection in order to comply with the provisions of interstate fishery management plans adopted by the Atlantic States Marine Fisheries Commission or to meet unforeseen circumstances or emergencies affecting marine resources, (B) the agency states in writing its reasons for that finding, and (C) the Governor approves such finding in writing.

(2) The agency shall submit an electronic copy of the proposed emergency regulation to the standing legislative regulation review committee in the form prescribed in subsection (b) of section 4-170, together with a statement of the terms or substance of the intended action, the purpose of the action and a reference to the statutory authority under which the action is proposed. The committee may approve or disapprove the proposed emergency regulation, in whole or in part, not later than fifteen calendar days after its submission to the committee, at a regular meeting, if one is scheduled, or may, upon the call of either chairman or any five or more members, hold a special meeting for the purpose of approving or disapproving the regulation, in whole or in part. Failure of the committee to act on such regulation within such fifteen-day period shall be deemed an approval. If the

committee disapproves such regulation, in whole or in part, it shall notify the agency of the reasons for its action. An approved emergency regulation shall be posted on the eRegulations System by the office of the Secretary of the State and shall be effective for a period of not longer than one hundred eighty days from the date it is approved or deemed approved and posted. Such one-hundred-eighty-day period may be extended an additional sixty days for emergency regulations described in subparagraph (A)(ii) of subdivision (1) of this subsection, provided the Commissioner of Energy and Environmental Protection requests of the standing legislative regulation review committee an extension of the renewal period at the time such regulation is submitted or not less than fifteen calendar days before the emergency regulation expires and the committee approves such extension. Failure of the committee to act on such request within fifteen calendar days shall be deemed an approval of the extension. Nothing in this subsection shall preclude an agency proposing an emergency regulation from adopting a permanent regulation that is identical or substantially similar to the emergency regulation, but such action shall not extend the effective date of the emergency regulation.

(3) If the necessary steps to adopt a permanent regulation, including the posting of notice of intent to adopt, preparation and submission of a fiscal note in accordance with the provisions of subsection (b) of section 4-170 and approval by the Attorney General and the standing legislative regulation review committee, are not completed prior to the expiration date of an emergency regulation, the emergency regulation shall cease to be effective on such expiration date.