



Billing Code 4410-09-P
DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-477]

Schedules of Controlled Substances: Placement of Zipeprol in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes placing the substance zipeprol (Chemical name: 1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol), including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers and salts is possible, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle zipeprol.

DATES: Comments must be submitted electronically or postmarked on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Interested persons may file a request for hearing or waiver of hearing pursuant to 21 Code of Federal Regulations (CFR) 1308.44 and in accordance with 21 CFR 1316.45

and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference “Docket No. DEA-477” on all electronic and written correspondence, including any attachments.

- *Electronic comments:* DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the webpage or attach a file for lengthier comments. Please go to <http://www.regulations.gov> and follow the on-line instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on [regulations.gov](http://www.regulations.gov). If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

- *Paper comments:* Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

- *Hearing requests:* All requests for a hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 362-3261.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly

available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to <http://www.regulations.gov> may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this proposed rule are available at <http://www.regulations.gov> for easy reference.

Request for Hearing or Waiver of Participation in Hearing

Pursuant to 21 United States Code (U.S.C.) 811(a), this action is a formal rulemaking “on the record after opportunity for a hearing.” Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for a hearing or notices of intent to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(a) or (b), and include a statement of interest in

the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c).

All requests for hearing and waivers of participation must be sent to DEA using the address information provided above.

Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention indicating that a drug or other substance has been added or transferred to a schedule specified in the notification, the Secretary of the Department of Health and Human Services (HHS),¹ after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act (FDCA) meet the requirements of the schedule specified in the notification with respect to the specific drug or substance. 21 U.S.C. 811(d)(3). If such requirements are not met by existing controls

¹ As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the Controlled Substances Act, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

and the Secretary of the HHS concurs in the scheduling decision, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to 21 U.S.C. 811(a) and (b). 21 U.S.C. 811(d)(3)(B). Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of the DEA (Administrator). 28 CFR 0.100.

Background

Zipeprol, known chemically as 1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol, is pharmacologically an opioid drug with some hallucinogenic properties that has no approved medical use in the United States.

In June 1994 and January 1995, the Food and Drug Administration (FDA), on behalf of the Secretary of the HHS, published notices in the *Federal Register* regarding zipeprol to comply with 21 U.S.C. 811(d)(2). The 1994 notice requested information to be considered by the World Health Organization (WHO) in preparing its scientific and medical evaluation for zipeprol.² The 1995 notice solicited public comment regarding a

² FDA notice, International Drug Scheduling; Convention on Psychotropic Substances; Certain Stimulant/Hallucinogenic Drugs and Certain Nonbarbiturate Sedative Drugs, 59 FR 31639 (June 20, 1994).

recommendation by the WHO to impose international controls on zipeprol.³ In March 1995, the United Nations Commission on Narcotic Drugs (CND), on the advice of the Director-General of the WHO, placed zipeprol in Schedule II of the 1971 Convention.⁴

As a party to the 1971 Convention, the United States is taking action to place appropriate controls on zipeprol by scheduling it under the CSA after determining that no existing legal controls under subchapter I of the CSA and the FDCA meet the requirements of the scheduling decision with respect to zipeprol. 21 U.S.C. 811(d)(3). Specifically, DEA is proposing to place zipeprol in schedule I of the CSA. Placing zipeprol in schedule I of the CSA would satisfy the United States' international obligations as set forth in Article 2, paragraph 7(b) of the 1971 Convention, and as implemented by the CSA. 21 U.S.C. 811(d)(3).

Article 2, paragraph 7(b), of the 1971 Convention sets forth the minimum requirements that the United States must meet when a substance has been added to Schedule II of the 1971 Convention. Pursuant to the 1971 Convention, the United States must require licenses for the manufacture, export and import, and distribution of zipeprol. This license requirement is accomplished by the CSA's registration requirement as set forth in 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312. In addition, the United States must adhere to specific export and import provisions set forth in the 1971 Convention. This requirement is accomplished by the CSA's export and import provisions established in 21 U.S.C. 952, 953, 957, 958, and in accordance

³ FDA notice, International Drug Scheduling; Convention on Psychotropic Substances; World Health Organization Scheduling Recommendations for Seven Drug Substances, 60 FR 4169, 4173 (January 20, 1995).

⁴ United Nations Office on Drugs and Crime, CND. Decision 2 (XXXVIII). Inclusion of zipeprol in Schedule II of the Convention on Psychotropic Substances of 1971. https://www.unodc.org/pdf/decisions/decision2_38.pdf (last retrieved October 3, 2018).

with 21 CFR part 1312. Likewise, under Article 13, paragraphs 1 and 2, of the 1971 Convention, a party to the 1971 Convention may notify another party, through the Secretary-General of the United Nations, that it prohibits the importation of a substance in Schedule II, III, or IV of the Convention. If such notice is presented to the United States, the United States shall take measures to ensure that the named substance is not exported to the notifying country. This requirement is also accomplished by the CSA's export provisions mentioned above. Under Article 16, paragraph 4, of the 1971 Convention, the United States is required to provide annual statistical reports to the International Narcotics Control Board (INCB). Using INCB Form P, the United States shall provide the following information: (1) in regard to each substance in Schedule I and II of the 1971 Convention, quantities manufactured, exported to and imported from each country or region as well as stocks held by manufacturers; (2) in regard to each substance in Schedule II and III of the 1971 Convention, quantities used in the manufacture of exempt preparations; and (3) in regard to each substance in Schedule II - IV of the 1971 Convention, quantities used for the manufacture of non-psychotropic substances or products. Lastly, under Article 2 of the 1971 Convention, the United States must adopt measures in accordance with Article 22 to address violations of any statutes or regulations that are adopted pursuant to its obligations under the 1971 Convention. The United States complies with this provision as persons acting outside the legal framework established by the CSA are subject to administrative, civil, and/or criminal action.

Proposed Determination to Schedule Zipeprol

Pursuant to 21 U.S.C. 811(b), DEA gathered the necessary data on zipeprol and on April 3, 2009, submitted it to the Assistant Secretary for Health of the HHS with a

request for a scientific and medical evaluation of available information and a scheduling recommendation for zipeprol. On May 20, 2013, HHS provided to DEA a written scientific and medical evaluation and scheduling recommendation entitled, “Basis for the Recommendation for Control of Zipeprol and Its Salts in Schedule I of the Controlled Substances Act.” Pursuant to 21 U.S.C. 811(b), this document contained HHS’ eight-factor analysis of zipeprol, along with its recommendation that zipeprol be placed in schedule I of the CSA.

In response, DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by the HHS and all other relevant data, and completed its own eight-factor review document pursuant to 21 U.S.C. 811(c). Since receiving the HHS recommendation, no additional studies have been published in the scientific literature. Included below is a brief summary of each factor as analyzed by HHS and DEA in their respective eight-factor analyses, and as considered by DEA in its proposed scheduling determination. Please note that both DEA and HHS analyses are available in their entirety under “Supporting Documents” of the public docket for this proposed rule at <http://www.regulations.gov> under docket number “DEA-477.”

1. *The Drug’s Actual or Relative Potential for Abuse:* As reported by HHS, there are numerous reports indicating that abuse of zipeprol resulted in seizures, comas, amnesia, hallucinations, and death in countries where zipeprol has been marketed as an antitussive. The pharmacological effects of zipeprol are similar to opioids in schedule II of the CSA such as morphine; however, zipeprol is a weak opioid relative to morphine. Hallucinations, convulsions, and opioid-like tolerance and dependence are observed in humans following zipeprol intake. Zipeprol abuse is associated with psychological and

physical dependence. Abuse liability studies suggest that the primary motivation for zipeprol abuse was reaching the opioid-like, hypnotic sedative effects and euphoria associated with this drug.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* Zipeprol binds with low to moderate affinity to mu and kappa opioid receptors, has a moderate affinity for sigma 1 receptors, and has a strong affinity for sigma 2 receptors. Animal testing data in monkeys, rats and mice show that zipeprol is self-administered. Acute cardiovascular and respiratory toxicity was observed in animals continuously infused with zipeprol. Published clinical reports have indicated that euphoric effects are observed at doses ranging from 3- to 10- fold higher than the therapeutic daily dose range (75–150 mg/day). Generalized seizures were reported at relatively low doses (375 mg) but still higher than the therapeutic dose range.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* Zipeprol, also known as 1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol, has a molecular weight of 322.37 g/mol. Zipeprol is extensively metabolized in humans into four major metabolites. Zipeprol is not expected to be detected in urine with a normal pH. When urine pH rises above 6.2, unchanged zipeprol is reabsorbed whereas under acidic urine conditions (pH < 5.0), approximately 1–5 percent of zipeprol is excreted unchanged. There is no currently accepted medical use of zipeprol in the United States. In other countries, zipeprol was used as a cough suppressant (antitussive), but there is no longer any reported manufacture of, consumption of, stocks or trade of zipeprol.

4. *Its History and Current Pattern of Abuse:* There have been numerous reports of zipeprol abuse from Brazil, Chile, France, Italy, Mexico, the Republic of Korea, Switzerland, and the former Yugoslavia during the 1980s and 1990s. These reports suggest the sedative, hallucinogenic, and euphorogenic effects of zipeprol, and its ability to suppress some signs of opioid withdrawal at high doses, may be the reasons for its abuse. It is important to note that the ability of one opioid to suppress withdrawal from a different opioid does not represent a beneficial effect. Ease of obtaining zipeprol by over-the-counter access may have contributed to its widespread abuse in some countries. Following these reports, many countries in Asia, Europe, and South America discontinued medical use of zipeprol. Incidences of zipeprol abuse were not reported after placement of zipeprol in Schedule II of the 1971 Convention on Psychotropic Substances in 1995 (CND Dec. 38/2). Queries of DEA's System to Retrieve Information from Drug Evidence (STRIDE)/STARLiMS⁵ and the National Forensic Laboratory Information System (NFLIS)⁶ databases on October 3, 2018, did not generate any reports of zipeprol, suggesting that it is not trafficked in the United States.

5. *The Scope, Duration, and Significance of Abuse:* The lack of abuse and overdose associated with zipeprol is most likely due to its lack of availability for medical use in the United States.

⁵ STRIDE is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from DEA, other federal agencies, and law enforcement agencies. On October 1, 2014, STARLiMS replaced STRIDE as DEA laboratory drug evidence data system of record.

⁶ NFLIS is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by state and local forensic laboratories across the country. The NFLIS participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is over 97 percent. NFLIS includes drug chemistry results from completed analyses only.

6. *What, if any, Risk There is to the Public Health:* Currently in the United States, zipeprol is not an FDA-approved drug, and there have been no reports or epidemiological studies submitted to FDA regarding its abuse. In countries where it was available for medical use, zipeprol became a significant health problem. Based on the available clinical data, zipeprol has the same risks to public health as schedule I or schedule II substances. Such risks include deaths due to voluntary or accidental acute intoxications and the potential for psychological and physical dependence.

7. *Its Psychic or Physiological Dependence Liability:* Psychological and physiological dependence is associated with zipeprol. Several clinical studies examined and described physical dependence and withdrawal effects associated with zipeprol abuse. Main signs of zipeprol withdrawal include sweating, diarrhea, anxiety, insomnia, dyspnea, yawning, and pain. The euphoric and hallucinogenic effects associated with zipeprol and other opioid-like drugs serve as reinforcers and can result in psychological dependence and are supported by case studies with zipeprol abusers.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* DEA and HHS find that zipeprol is not an immediate precursor of a substance already controlled under the CSA.

Conclusion: Based on consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and based on DEA's consideration of its own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of zipeprol. As such, DEA hereby proposes to schedule zipeprol as a controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of the HHS and review of all available data, the Acting Administrator of the DEA (Acting Administrator), pursuant to 21 U.S.C. 812(b)(1), finds that:

(1) Zipeprol has a high potential for abuse. Widespread reports of zipeprol abuse have occurred in countries that have marketed zipeprol. Zipeprol is self-administered in animals and clinical studies reported that zipeprol abuse is related to its opioid, sedative, hallucinogenic, and euphorogenic effects. Epidemiological reports on zipeprol, worldwide, have indicated that adverse reactions (primarily seizures) are caused by zipeprol abuse and dependence.

(2) There are no approved New Drug Applications for zipeprol and no known therapeutic applications for zipeprol in the United States⁷. Therefore, zipeprol has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of zipeprol under medical supervision. Zipeprol was first approved and introduced as an antitussive in France and

⁷ Although there is no evidence suggesting that zipeprol has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by the FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated:

- i. the drug's chemistry must be known and reproducible;
- ii. there must be adequate safety studies;
- iii. there must be adequate and well-controlled studies proving efficacy;
- iv. the drug must be accepted by qualified experts; and
- v. the scientific evidence must be widely available.

57 FR 10499 (1992).

Italy during the late 1970s. Following several reports of abuse and overdosing from zipeprol, this drug was withdrawn in the early to mid-1990s.

Based on these findings, the Acting Administrator concludes that zipeprol warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1). More precisely, because of its opioid effects, and producing opioid-like tolerance and dependence in humans, DEA is proposing to place zipeprol in 21 CFR 1308.11(b) (the opiates category of schedule I). As such, the proposed control of zipeprol includes the substance as well as its 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.

Requirements for Handling Zipeprol

If this rule is finalized as proposed, zipeprol would be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, import, export, engagement in research, conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) zipeprol, or who desires to handle zipeprol, would need to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312 as of the effective date of a final scheduling action. Any person who currently handles zipeprol, and is not registered with DEA, would need to submit an application for registration and may not

continue to handle zipeprol after the effective date of a final scheduling action unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration would be required to surrender all quantities of currently held zipeprol, or transfer all quantities of currently held zipeprol to a person registered with DEA before the effective date of a final scheduling action in accordance with all applicable federal, state, local, and tribal laws. As of the effective date of a final scheduling action, zipeprol would be required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

3. *Security.* Zipeprol would be subject to schedule I security requirements and would need to be handled and stored pursuant to 21 U.S.C. 821 and 823, and in accordance with 21 CFR 1301.71–1301.93 as of the effective date of a final scheduling action.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of zipeprol would need to be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302 as of the effective date of a final scheduling action.

5. *Quota.* Only registered manufacturers would be permitted to manufacture zipeprol in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of the effective date of a final scheduling action.

6. *Inventory.* Every DEA registrant who possesses any quantity of zipeprol on the effective date of a final scheduling action would be required to take an inventory of

zipeprol on hand at that time, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who becomes registered with DEA on or after the effective date of the final scheduling action would be required to take an initial inventory of all stocks of controlled substances (including zipeprol) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant would be required to take an inventory of all controlled substances (including zipeprol) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, 1312, and 1317 as of the effective date of a final scheduling action. Manufacturers and distributors would be required to submit reports regarding zipeprol to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312 as of the effective date of a final scheduling action.

8. *Order Forms.* Every DEA registrant who distributes zipeprol would be required to comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305 as of the effective date of a final scheduling action.

9. *Importation and Exportation.* All importation and exportation of zipeprol would need to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312 as of the effective date of a final scheduling action.

10. *Liability.* Any activity involving zipeprol not authorized by, or in violation of, the CSA or its implementing regulations, would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

This rulemaking is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct,

and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this proposed rule, and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA proposes placing the substance zipeprol (chemical name: 1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol), including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of

such isomers, esters, ethers and salts is possible, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle zipeprol.

According to HHS, zipeprol has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no commercial market for zipeprol in the United States. Additionally, queries of DEA's STRIDE/STARLiMS and the NFLIS databases on October 3, 2018, did not generate any reports of zipeprol, suggesting that it is not trafficked in the United States. Therefore, DEA estimates that no United States entity currently handles zipeprol and does not expect any United States entity to handle zipeprol in the foreseeable future. DEA concludes that no United States entity would be affected by this rule if finalized. As such, the proposed rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the "Regulatory Flexibility Act" section above, DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*), that this action would not result in any Federal mandate that may result "in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more

(adjusted annually for inflation) in any 1 year * * *.” Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of the UMRA of 1995.

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 proposed to be amended to read 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 paragraph (b)(71) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(b) * * *

(71) Zipeprol..... 9873

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Uttam Dhillon,
Acting Administrator.

[FR Doc. 2020-09592 Filed: 5/13/2020 8:45 am; Publication Date: 5/14/2020]