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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-949]

Schedules of Controlled Substances: Placement of Daridorexant in Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim final rule with request for comments published in the *Federal Register* on April 7, 2022, placing daridorexant ([(S)-2-(5-chloro-4-methyl-1*H*-benzo[*d*]imidazol-2-yl)-2-methylpyrrolidin-1-yl](5-methoxy-2-(2*H*-1,2,3-triazol-2-yl)phenyl)methanone), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of such isomers is possible, in schedule IV of the Controlled Substances Act (CSA). With the issuance of this final rule, the Drug Enforcement Administration maintains daridorexant in schedule IV of the CSA.

DATES: The effective date of this rulemaking is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug & Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

Under the Controlled Substances Act (CSA), as amended in 2015 by the Improving Regulatory Transparency for New Medical Therapies Act (section 2(b) of Pub. L. 114–89), when the Drug Enforcement Administration (DEA) receives

notification from the Department of Health and Human Services (HHS) that the Secretary has approved a certain new drug and HHS recommends control in the CSA schedule II-V, DEA is required to issue an interim final rule (IFR), with opportunity for public comment and to request a hearing, controlling the drug within a specified 90-day timeframe and to subsequently issue a final rule. 21 U.S.C. 811(j). When controlling a drug pursuant to subsection (j), DEA must apply the scheduling criteria of 21 U.S.C. 811 (b) through (d) and 812(b). 21 U.S.C. 811(j)(3).

On January 7, 2022, DEA received notification that the United States Food and Drug Administration (FDA) approved, on the same date, a new drug application (NDA) for QUVIVIQ (daridorexant) tablets for use as a treatment of adult patients with insomnia, characterized by difficulties with sleep onset and/or sleep maintenance. Daridorexant, chemically known as [(S)-2-(5-chloro-4-methyl-1*H*-benzo[*d*]imidazol-2-yl)-2-methylpyrrolidin-1-yl](5-methoxy-2-(2*H*-1,2,3-triazol-2-yl)phenyl)methanone, is a new molecular entity (NME) with central nervous system activity. Previously, on December 22, 2021, DEA received HHS's recommendation that DEA place daridorexant and "its salts" in schedule IV of the CSA, in the event that FDA approves the NDA for daridorexant. On April 7, 2022, DEA, pursuant to 21 U.S.C. 811(j), published an IFR (87 FR 20313) to place daridorexant (including its salts, isomers, and salts of isomers) in schedule IV of the CSA; the regulatory text only listed the chemical name for daridorexant. In the preamble of the IFR, DEA incorrectly misspelled the proprietary name for daridorexant's approved drug product as "QUIVIVIQ." The preamble of this final rule now correctly uses "QUVIVIQ." It bears emphasis that the regulatory text used in this final rule remains unchanged from that used in the IFR.

The IFR provided an opportunity for interested persons to submit comments, as well as to file a request for hearing or waiver of hearing, on or before May 9, 2022. DEA did not receive any requests for hearing or waivers of hearing.

Comment Received

In response to the IFR, DEA received one comment. The submission was from an anonymous commenter. The commenter supported the placement of daridorexant in schedule IV of the CSA, and noted its safety, effectiveness, and approved indication for use as a treatment of patients with insomnia.

DEA Response: DEA appreciates the support for this rulemaking.

Requirements for Handling Daridorexant

As indicated above, daridorexant has been a schedule IV controlled substance by virtue of an IFR issued by DEA on April 7, 2022. Thus, this final rule does not alter the regulatory requirements applicable to handlers of daridorexant that have been in place since that time. Nonetheless, for informational purposes, DEA restates here those requirements. Daridorexant is subject to the CSA's schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule IV substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) daridorexant, or who desires to handle daridorexant, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who intends to handle daridorexant and is not registered with DEA must submit an application for registration and may not handle daridorexant unless DEA has approved that application, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. These registration requirements, however, are not applicable to patients (end users) who possess daridorexant pursuant to a lawful prescription.

2. *Disposal of stocks.* Any person who obtains a schedule IV registration to handle daridorexant but who subsequently does not desire or is not able to maintain such registration must surrender all quantities of daridorexant, or may transfer all quantities of daridorexant to a person registered with DEA in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Daridorexant is subject to schedule III-V security requirements for DEA registrants and must be handled and stored in accordance with 21 CFR 1301.71–1301.77. Non-practitioners handling daridorexant must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93. These requirements, however, are not applicable to patients (end users) who possess daridorexant pursuant to a lawful prescription.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of daridorexant must comply with 21 U.S.C. 825 and be in accordance with 21 CFR part 1302.

5. *Inventory.* Every DEA registrant who possesses any quantity of daridorexant was required to keep an inventory of daridorexant on hand, as of April 7, 2022, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. These requirements, however, are not applicable to patients (end users) who possess daridorexant pursuant to a lawful prescription.

6. *Records and Reports.* DEA registrants must maintain records and submit reports for daridorexant, pursuant to 21 U.S.C. 827 and 832(a), and in accordance with 21 CFR 1301.74(b) and (c) and 1301.76(b) and parts 1304, 1312, and 1317.

7. *Prescriptions.* All prescriptions for daridorexant, or products containing daridorexant, must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule IV controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of daridorexant may only be for the legitimate purposes consistent with the drug's labeling, or for research activities authorized by the Federal Food, Drug, and Cosmetic Act (FDCA), as applicable, and the CSA.

9. *Importation and Exportation.* All importation and exportation of daridorexant must comply with 21 U.S.C. 952, 953, 957, and 958, and be in accordance with 21 CFR part 1312.

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

Regulatory Analyses

Administrative Procedure Act

This final rule adopts, without change, the amendment made by the IFR that is already in effect. Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) generally requires notice and comment for rulemakings. However, 21 U.S.C. 811(j) provides that in cases where a certain new drug is (1) approved by HHS, under section 505(c) of the FDCA and (2) HHS recommends control in CSA schedule II-V, DEA shall issue an IFR scheduling the drug within 90 days. Additionally, subsection (j) specifies that the rulemaking shall become immediately effective as an IFR without requiring DEA to demonstrate good cause. DEA issued an IFR on April 7, 2022, and solicited public comments on that rule. Subsection (j) further states that after giving interested persons the opportunity to comment and to request a hearing, the Attorney General, as delegated to the Administrator of DEA, shall issue a final rule in accordance with the scheduling

criteria of 21 U.S.C. 811(b) through (d) and 812(b). DEA is now responding to the comment submitted by the public and issuing the final rule, in accordance with 21 U.S.C. 811(j).

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

In accordance with 21 U.S.C. 811(a) and (j), this 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 pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 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 rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does 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.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This final rule does not have tribal implications warranting the application of E.O. 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the above discussion regarding the applicability of the APA, DEA was not required to publish a general notice of proposed rulemaking. Consequently, the RFA does not apply.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined 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 UMRA of 1995.

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.

Congressional Review Act

This final rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this final rule to the Government Accountability Office, the House, and the Senate under the CRA.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 26, 2022, 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.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

Accordingly, the interim final rule (87 FR 20313) amending 21 CFR part 1308, which published on April 7, 2022, is adopted as a final rule without change.

Scott Brinks,
Federal Register Liaison Officer,
Drug Enforcement Administration.

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