



8 November 2022

s 9(2)(a)

By email: s 9(2)(a)
Ref: H2022011708

Tēnā koe s 9(2)(a)

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to Manatū Hauora (the Ministry of Health) on 2 September 2022 for information regarding fentanyl. You requested for:

“...all correspondence including emails, documents, advice, reports held by the Ministry of Health about the drug Fentanyl in the past 12 months.”

On 7 September 2022, Manatū Hauora contacted you in accordance with section 18B to of the Act, as your request was for a very large volume of information and may be refused under section 18(f) as it could not be made available without substantial collation or research. On the same day you agreed to refine to the below:

*“all correspondence, clinical and policy advice between The Ministry of Health and
A. The Minister/Ministers Office
B. Pharmac
C. Medsafe
And adjust my request to in the last 6 months - adjusted from 12 months.”*

On 28 September 2022 your request was further refined to exclude correspondence.

Manatū Hauora has identified five documents within scope of your refined request. All documents are itemised in Appendix 1 and copies of the documents are enclosed. Where information is withheld under section 9 of the Act, I have considered the countervailing public interest in releasing information and consider that it does not outweigh the need to withhold at this time.

Please note that while the time-period for your request was refined to the last 6 months, Manatū Hauora has provided documents within the last 12 months in line with your original request.

I trust this information fulfils your request. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatu Hauorā website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'S Waldegrave', with a long horizontal flourish extending to the right.

Steve Waldegrave
**Associate Deputy Director-General,
Strategy, Policy and Legislation | Te Pou Rautaki**

Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	23 August 2021	Briefing HR2021143: Cabinet Legislation Committee: Misuse of Drugs (Classification and Presumption of Supply) Order 2021 and Misuse of Drugs (Fentanyl and Tramadol) Amendment Regulations 2021	Some information withheld under section 9(2)(a) of the Act to protect the privacy of natural persons.
2		Misuse of Drugs (Classification and Presumption of Supply) Order 2022 and Misuse of Drugs (Fentanyl and Tramadol) Amendment Regulations 2022	Publicly available at: www.health.govt.nz/system/files/documents/information-release/misuse_of_drugs_order_and_a_mendment_regs_leg_paper.pdf .
3	17 February 2022	Cabinet Legislation Committee: Minute of Decision: Misuse of Drugs (Classification and Presumption of Supply) Order 2022 and Misuse of Drugs (Fentanyl and Tramadol) Amendment Regulations 2022	Publicly available at: www.health.govt.nz/system/files/documents/information-release/leg-22-min-0006_minute_misuse_of_drugs_classification_and_presumption_of_supply_order_2022.pdf .
4	7 March 2022	Letter to Health Committee: Advice on the Misuse of Drugs (Classification and Supply) Order 2022	Publicly available at: www.parliament.nz/resource/en-NZ/53SCHE_EVI_119921_HE23673/8e6bdc175703b05310672a978db00a58b058f6c4 .
5	22 March 2022	Letter to Health Committee: Notice of Motion regarding the Misuse of Drugs (Classification and Presumption of Supply) Order 2022	Publicly available at: www.parliament.nz/resource/en-NZ/53SCHE_EVI_119921_HE23686/393a844d4393cce1fbd4899f08caf5490f77b785 .

Briefing

Cabinet Legislation Committee: Misuse of Drugs (Classification and Presumption of Supply) Order 2021 and Misuse of Drugs (Fentanyl and Tramadol) Amendment Regulations 2021

Date due to MO: 23 August 2021 **Action required by:** 3 September 2021

Security level: IN CONFIDENCE **Health Report number:** 20211143

To: Hon Andrew Little, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Caroline Flora	Associate Deputy Director General, System Strategy and Policy	S9(2)(a)
Steve Barnes	Acting Group Manager, Family and Community Health Policy, System Strategy and Policy	S9(2)(a)

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Cabinet Legislation Committee: Misuse of Drugs (Classification and Presumption of Supply) Order 2021 and Misuse of Drugs (Fentanyl and Tramadol) Amendment Regulations 2021

Security level: IN CONFIDENCE **Date:** 23 August 2021

To: Hon Andrew Little, Minister of Health

Purpose of report

1. This briefing provides you with a draft Cabinet Legislation Committee (LEG) paper seeking approval to submit the Misuse of Drugs (Classification and Presumption of Supply) Order 2021 (the Order) and the Misuse of Drugs (Fentanyl and Tramadol) Amendment Regulations 2021 (the Amendments) to the Executive Council.
2. This report discloses all relevant information and implications.

Proposed changes

3. On 17 May 2021, Cabinet agreed to classify or reclassify 49 substances as controlled drugs to ensure they are regulated in line with the risk of harm they pose to individuals and society [refer CAB-21-MIN-0167]. These substances are becoming more available in New Zealand and have been implicated in multiple deaths and hospital admissions.
4. Classifying these substances under the Misuse of Drugs Act 1975 means that heavier penalties can be imposed, and Police and Customs will have increased search and seizure powers to disrupt the supply of the substances. Interrupting supply to those who may use them harmfully is a key part of a health response to reduce drug related harm.
5. The LEG paper seeks agreement to submit the attached Order and Amendments to the Executive Council.
6. The effect of the Order will be to:
 - a. classify or reclassify 49 harmful substances as controlled drugs under the Misuse of Drugs Act 1975; and
 - b. set quantities at and above which it is presumed that five groups of those substances are for supply.
7. The effect of the Amendments will be to maintain legitimate therapeutic access to fentanyl and tramadol in a similar way as prior to being classified but with tighter controls to minimise the risk they will be misused. The Amendments will come into force when the Order in Council is brought into force by commencement Order.

Next steps

8. Following consultation, if you agree, we propose the LEG paper is lodged by 16 September for consideration on 23 September.
9. If confirmed by Cabinet, the Order and the Amendments will be submitted to the Executive Council and a notice issued in the *Gazette*.

- 10. Your office will then need to lodge in the House of Representatives a Notice of Motion, prepared by the Ministry, to approve the Order. This Order will be automatically referred to the Health Select Committee which must report back to the House within 28 days.
- 11. After the Order has been approved by the House of Representatives, the Ministry will provide you with a draft Commencement Order.
- 12. The Order and the Amendments will come into force by Commencement Order.
- 13. A communications plan will be prepared and will include steps to inform the pharmaceutical industry, pharmacies and health practitioners of the changes once the Order in Council is notified in the Gazette.

Recommendations

We recommend you:

- a) **agree** to circulate the draft LEG paper, the Misuse of Drugs (Classification and Presumption of Supply) Order 2021 and the Misuse of Drugs (Fentanyl and Tramadol) Amendment Regulations 2021 to your colleagues for consultation
- b) **note** it is proposed the LEG paper be considered by the Cabinet Legislation Committee on 23 September 2021
- c) **note** that if confirmed by Cabinet the Order and the Amendments will be submitted to the Executive Council and gazetted
- d) **note** the Ministry will draft a Notice of Motion for you to lodge in the House of Representatives once the Order is gazetted

Yes/No
 - will need to gauge when it is an appropriate time to do so

PP

Maree Roberts
 Deputy Director-General
System Strategy and Policy
 Date:

Hon Andrew Little
Minister for Health
 Date: 10/10/21

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

PCO 23968/2.1
Drafted by Leigh Talamaivao
IN CONFIDENCE

Misuse of Drugs (Classification and Presumption of Supply) Order 2021

Governor-General

Order in Council

At Wellington this day of 2021

Present:
in Council

This order is made under section 4(1) and (1B) of the Misuse of Drugs Act 1975—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Health made after complying with section 4B of that Act.

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**Misuse of Drugs (Classification and Presumption of
Supply) Order 2021**

cl 1

Order

1 Title

This order is the Misuse of Drugs (Classification and Presumption of Supply) Order 2021.

2 Commencement

This order comes into force on a date appointed by the Governor-General by Order in Council made under section 4A(1) of the Misuse of Drugs Act 1975.

3 Amendments to Misuse of Drugs Act 1975

Clauses 4 to 8 amend the Misuse of Drugs Act 1975.

4 Schedule 1 amended

In Schedule 1, clause 1, insert in their appropriate alphabetical order:

Acetylfentanyl**Acryloxyfentanyl****Amides and carbamates of methamphetamine** **α -Pyrrolidinovalerophenone (α -PVP)****Butyrfentanyl****Carfentanil****Cyclopropylfentanyl****4-Fluoroisobutyrfentanyl (4-FIBF)****Furanylfentanyl****Methoxyacetylfentanyl****Ocfentanil****Tetrahydrofuranylfentanyl (THF-F)****U-47700****U-48800****U-49900****5 Schedule 2 amended**

(1) In Schedule 2, Part 1, clause 1, insert in their appropriate alphabetical order:

AB-CHMINACA**AB-FUBINACA****AB-PINACA****5F-AKB-48****AM-2201****Ethylone**

**Misuse of Drugs (Classification and Presumption of
Supply) Order 2021**

cl 7

Fentanyl
JWH-018
MDMB-CHMICA
MT-45
N-ethyl pentylone
Para-methoxymethylamphetamine (PMMA)
5F-PB-22
UR-144
XLR-11

- (2) In Schedule 2, Part 2, clause 1, insert in their appropriate alphabetical order:
Lisdexamfetamine
Mephedrone
Methylone
- (3) In Schedule 2, Part 3, clause 1, delete “Fentanyl (1-phenethyl-4-(*N*-propionylam-
 ilino)piperidine)”.

6 Schedule 3 amended

- (1) In Schedule 3, Part 1, clause 2, insert in its appropriate alphabetical order:
Flubromazolam
- (2) In Schedule 3, Part 2, insert in its appropriate alphabetical order:
Tramadol
- (3) In Schedule 3, Part 5, clause 1, insert in their appropriate alphabetical order:
Zolpidem
Zopiclone

7 Schedule 4 amended

- (1) In Schedule 4, Part 1, clause 1, insert in their appropriate alphabetical order:
Norfentanyl and its salts
N-phenyl-1-(2-phenylethyl)piperidin-4-amine
N-phenyl-4-piperidinamine and its salts
1-phenethyl-4-piperidone (NPP) and its salts
1-phenethylpiperidin-4-ylidenephethylamine and its salts
4-piperidone and its salts
Propionyl chloride
- (2) In Schedule 4, Part 2, clause 1, insert in their appropriate alphabetical order:
Hydriodic acid
Hypophosphorous acid

**Misuse of Drugs (Classification and Presumption of
Supply) Order 2021**

cl 8

Iodine
Phosphorous acid
Red phosphorus

8 Schedule 5 amended

In Schedule 5, clause 1, insert in their appropriate alphabetical order:

Ethylone and N-ethyl pentylone	5 grams or 100 doses, whether or not contained in a substance, preparation, or mixture, or 25 flakes, tablets, capsules, or other drug forms, each containing some quantity of the drug
Fentanyl analogues specified in Schedule 3	0.5 grams, whether or not contained in a substance, preparation, or mixture, or 25 flakes, tablets, capsules, or other drug forms, each containing some quantity of the drug
Para-methoxymethylamphetamine (PMMA)	5 grams, whether or not contained in a substance, preparation, or mixture
Synthetic cannabinoids specified in Part 1 of Schedule 2	250 milligrams, whether or not contained in a substance, preparation, or mixture, except when contained in plant material, and 28 grams for plant material containing any of the specified synthetic cannabinoids
Synthetic opioids specified in Schedule 1	0.5 grams whether or not contained in a substance, preparation, or mixture

Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order amends Schedules 1 to 5 of the Misuse of Drugs Act 1975 (the Act).

The list of Class A controlled drugs in Schedule 1 is amended to include amides and carbamates of methamphetamine, α -Pyrrolidinovalerophenone (α -PVP), specified fentanyl analogues, and specified synthetic opioids.

The list of Class B controlled drugs in Part 1 of Schedule 2 is amended to include specified synthetic cannabinoids, ethylone, fentanyl, MT-45, N-ethyl pentylone, and para-methoxymethylamphetamine (PMMA).

The list of Class B controlled drugs in Part 2 of Schedule 2 is amended to include lisdexamfetamine, mephedrone, and methylone.

The list of Class B controlled drugs in Part 3 of Schedule 2 is amended to remove fentanyl (1-phenethyl-4-(N-propionylanilino)piperidine).

Misuse of Drugs (Classification and Presumption of Supply) Order 2021

Explanatory note

The list of Class C controlled drugs in Part 1 of Schedule 3 is amended to include flubromazolam.

The list of Class C controlled drugs in Part 2 of Schedule 3 is amended to include tramadol.

The list of Class C controlled drugs in Part 5 of Schedule 3 is amended to include zolpidem and zopiclon.

The list of precursor substances in Part 1 of Schedule 4 is amended to include specified precursor substances of fentanyl.

The list of precursor substances in Part 2 of Schedule 4 is amended to include specified precursor substances of methamphetamine.

The amounts, levels, and quantities at which controlled drugs are presumed to be for supply are specified in Schedule 5. This order amends Schedule 5 to include specifications for specified synthetic cannabinoids, specified fentanyl analogues, specified synthetic opioids, ethylone and N-ethyl pentylone, and para-methoxymethylamphetamine (PMMA).

The amendments in this order follow a recommendation to the Minister of Health by the Expert Advisory Committee on Drugs established under section 5AA of the Act.

This order comes into force on a date to be set by a commencement order made under section 4A(1) of the Act. Section 4A(2) provides that the commencement order may be made only after the House of Representatives has approved this order. Section 4A(3)(a) states that approval cannot be given until at least 28 days after the date on which this order is notified in the *Gazette*.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This order is administered by the Ministry of Health.

PCO 23972/1.2
Drafted by Leigh Talamaivao
IN CONFIDENCE

Misuse of Drugs (Fentanyl and Tramadol) Amendment Regulations 2021

Governor-General

Order in Council

At Wellington this day of 2021

Present:
in Council

These regulations are made under section 37 of the Misuse of Drugs Act 1975 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Misuse of Drugs (Fentanyl and Tramadol) Amendment Regulations 2021.

**Misuse of Drugs (Fentanyl and Tramadol) Amendment
Regulations 2021**

r 2

2 Commencement

These regulations come into force on the date that the Misuse of Drugs (Classification and Presumption of Supply) Order 2021 comes into force.

3 Principal regulations

These regulations amend the Misuse of Drugs Regulations 1977.

4 Regulation 22 amended (Restriction on supply of certain controlled drugs)

After regulation 22(2)(c), insert:

(d) fentanyl.

5 Regulation 28 amended (Custody of controlled drugs)

After regulation 28(4)(e), insert:

(f) tramadol.

6 Schedule 1C amended

In Schedule 1C, after item 3, insert:

4 Tramadol

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which amend the Misuse of Drugs Regulations 1977 (the **principal regulations**) come into force on the date that the Misuse of Drugs (Classification and Presumption of Supply) Order 2021 comes into force.

These regulations amend the principal regulations by—

- adding fentanyl to the list of controlled drugs that do not require the Minister's approval under regulation 22(2); and
- adding tramadol to the list of controlled drugs that are not subject to the storage requirements in regulation 28(1); and
- adding tramadol to the list of controlled drugs that midwives may prescribe.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Health.