

**RULES AND REGULATIONS PERTAINING TO
SYNTHETIC MARIJUANA PRODUCTS**

SECTION I. AUTHORITY 1

SECTION II. PURPOSE 1

SECTION III. DEFINITIONS 1

SECTION IV. GENERAL REQUIREMENTS 2

SECTION V. VIOLATIONS AND PENALTIES 2

SECTION VI. EFFECTIVE DATE 2

SECTION VII. SEVERABILITY 2

SECTION VIII. REPEAL 2

SECTION I. AUTHORITY

The following Rules Pertaining to Synthetic Marijuana Products are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas, specifically Ark. Code Ann. § 20-7-109.

SECTION II. PURPOSE

Synthetic marijuana products marketed under names such as K2, Spice, Genie, Blaze, Red X Dawn and Zohia commonly contain the substances JWH-018 and JWH-073. These substances are believed to be manufactured in China and were invented to study the effects of cannabinoids on the brains of mice. They have not been tested or approved for use by humans in the United States, and the Drug Enforcement Administration has listed these substances as “drugs and chemicals of concern.” The purpose of this rule is to prohibit the sale and distribution of synthetic marijuana products in Arkansas.

SECTION III. DEFINITIONS

A. “Synthetic marijuana products” means a synthetic equivalent of the substance contained in the Cannabis plant, or in the resinous extractives of the genus Cannabis, or a synthetic substance, derivative, or its isomers with similar chemical structure or pharmacological activity such as the following:

1. 1-Pentyl-3-(1-naphthoyl) indole; some trade or other names: JWH-018;
2. 1-Butyl-3-(1-naphthoyl) indole; some trade or other names: JWH-073.

B. “Distributor” means any person offering for sale, exchange, or barter any synthetic marijuana products destined for sale in Arkansas;

C. "Participate in the synthetic marijuana products market" means to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of any synthetic marijuana product.

- D. "Person" means an individual, partnership, corporation, or association;
- E. "Retailer" means any person offering for sale synthetic marijuana products to individual consumers.

SECTION IV. GENERAL REQUIREMENTS

- A. It shall be unlawful for any person, retailer or distributor to participate in the synthetic marijuana products market.
- B. Any product found to contain a synthetic marijuana product shall not be distributed, sold, or moved until the Department allows such activity.

SECTION V. VIOLATIONS AND PENALTIES

- A. Every firm, person, or corporation violating any of the provisions of this rule shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both. Each day of violation shall constitute a separate offense.
- B. Every firm, person, or corporation who violates this rule may be assessed a civil penalty by the board. The penalty shall not exceed one thousand dollars (\$1,000) for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

SECTION VI. EFFECTIVE DATE

The effective date of these Rules and Regulations shall be October 26, 2010.

SECTION VII. SEVERABILITY

If any provision of these Rules, or the application thereof, to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules which can give effect without the invalid provisions or applications, and to this end the provisions hereto are declared to be severable.

SECTION VIII. REPEAL

All Rules and parts of the Rules in conflict herewith are hereby repealed.

CERTIFICATION

This is to certify that the foregoing Rules Pertaining to Synthetic Marijuana Products were adopted by the Arkansas State Board of Health at a regular session of said Board held in Little Rock, Arkansas on the 14th day of October, 2010.

 /original signed/
Paul Halverson, DrPH
Secretary
Arkansas State Board of Health

The foregoing Rules, copy having been filed in my office, are hereby approved on this 15th day of October, 2010.

 /original signed/
Mike Beebe
Governor

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Health
DIVISION Legal
PERSON COMPLETING THIS STATEMENT Robert Brech
TELEPHONE NO. 501-661-2297 **FAX NO.** 501-661-2357 **EMAIL:** robert.brech@arkansas.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Synthetic Marijuana Products

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Does this proposed, amended, or repealed rule affect small businesses? Yes No
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
These are uncontrolled and unregulated substances. It would be purely speculative as to the revenue loss that might occur.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

These are uncontrolled and unregulated substances. It would be purely speculative as to the revenue loss that might occur due to stopping the sale of the product. There may also be a small number of court cases, which will result in additional state and local government expenditures. These expenditures are not estimated to be significant.

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

The Department does not anticipate that any additional personnel will be needed and any costs to the Department will be negligible.

ECONOMIC IMPACT STATEMENT OF PROPOSED RULES OR REGULATIONS

EO 05-04: Regulatory Flexibility

Department	<u>Department of Health</u>	Division	<u>Legal</u>
Contact Person	<u>Robert Brech</u>	Date	<u>7/2/2010</u>
Contact Phone	<u>501-661-2297</u>	Contact Email	<u>robert.brech@arkansas.gov</u>

Title or Subject Rules Pertaining to Synthetic Marijuana Products

Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.
There is a grave concern regarding the use of this product and its adverse health affects.
2. What are the top three benefits of the proposed rule or regulation?
Protect the public health, stop the sale of an unapproved product, and reduce the adverse health affects.
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?
The continued use of an unapproved product that is threatening the health of Arkansans.
4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.
There are no alternatives or voluntary standards that are applicable.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of *collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting* associated with this new rule or regulation.
Any economic impact will be negligible.
6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.
Any small business selling this unapproved product. It is unknown how many businesses sell the product.
7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.
N/A
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.
There should be no costs other than than the loss of revenue. Any estimate would be speculative.
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.
This rule will affect both small and large businesses in a similar manner.
10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.
Any business can easily comply by stopping the sale or distribution of the product.
11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?
Several states have banned the substance. The DEA has listed it as a "drug of concern."
12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.
None.