



Novel Psychoactive Substances and Analogues: Summary of State Laws

Research current through May 2017.

This project was supported by Grant No. G15599ONDCP03A, awarded by the Office of National Drug Control Policy. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the Office of National Drug Control Policy or the United States Government.

© 2017 Research is current as of May 2017. In order to ensure that the information contained herein is as current as possible, research is conducted using nationwide legal database software and individual state legislative websites. Please contact Jon Woodruff at (703) 836-6100, ext. 100 or jwoodruff@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS, 100 ½ East Main Street, Suite C, Manchester, IA 52057.

NAMSDL – Novel Psychoactive Substances and Analogues: Summary of State Laws

<u>STATE</u>	<u>PAGE</u>
ALABAMA	4
ALASKA	6
ARIZONA	8
ARKANSAS	10
CALIFORNIA	12
COLORADO	14
CONNECTICUT	16
DELAWARE	18
DISTRICT OF COLUMBIA	19
FLORIDA	21
GEORGIA	23
HAWAII	25
IDAHO	26
ILLINOIS	28
INDIANA	30
IOWA	32
KANSAS	33
KENTUCKY	35
LOUISIANA	37
MAINE	39
MARYLAND	40
MASSACHUSETTS	42
MICHIGAN	44
MINNESOTA	45
MISSISSIPPI	47
MISSOURI	48
MONTANA	50
NEBRASKA	51
NEVADA	53
NEW HAMPSHIRE	54
NEW JERSEY	56

© 2017 Research is current as of May 2017. In order to ensure that the information contained herein is as current as possible, research is conducted using nationwide legal database software and individual state legislative websites. Please contact Jon Woodruff at (703) 836-6100, ext. 100 or jwoodruff@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS, 100 ½ East Main Street, Suite C, Manchester, IA 52057.

NAMSDL – Novel Psychoactive Substances and Analogues: Summary of State Laws

NEW MEXICO	58
NEW YORK	59
NORTH CAROLINA	61
NORTH DAKOTA	63
OHIO	65
OKLAHOMA	66
OREGON	68
PENNSYLVANIA	69
RHODE ISLAND	71
SOUTH CAROLINA	73
SOUTH DAKOTA	74
TENNESSEE	75
TEXAS	77
UTAH	79
VERMONT	80
VIRGINIA	81
WASHINGTON	83
WEST VIRGINIA	85
WISCONSIN	87
WYOMING	88

<u>ALABAMA</u>	
State controlled substance scheduling authority	Alabama Department of Public Health (“Public Health,” identified in the law as the State Board of Health). Ala.Code § 20-2-20.
Emergency scheduling of NPS and /or analogues	State law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. As in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the state, unless Public Health objects to such scheduling within 30 days of notice. Ala.Code § 20-2-20(c).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	The definition of “synthetic controlled substance analogue” is contained within Schedule I of the state’s controlled substances list. Ala.Code § 20-2-23(b)(5)(a); Ala. Admin. Code r. Ch. 420-7-2, App. The definition is a combination of the “controlled substances analog” definition from Uniform Controlled Substances Act (“UCSA”) § 101(3) and NPS structural class definitions for synthetic cannabinoids and substituted cathinones.
Treatment of controlled substance analogues	Synthetic controlled substance analogues are treated as schedule I substances. Ala.Code § 20-2-23(b)(5)(c).
Notice provision re analogues	If the Alabama Department of Forensic Sciences (“Department”) determines that a substance qualifies as a synthetic controlled substance analogue under the law, the Department must notify the Alabama Department of Public Health with such information for their scheduling consideration. Ala.Code § 20-2-23(b)(5)(d).
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	The definition of “synthetic controlled substance analogue,” which is contained within schedule I, uses structural class definitions of synthetic cannabinoids and substituted cathinones. Otherwise, schedule I lists NPS individually. Ala. Admin. Code r. Ch. 420-7-2, App. The phrase “cannabimimetic agents,” appears in schedule I, although it is a subheading for individually-listed substances, rather than a neuro-chemical approach definition.

<u>ALABAMA</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	As part of the code section detailing penalties for “trafficking in illegal drugs,” there is a subsection covering a person who “knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 56 or more grams of a synthetic controlled substance or a synthetic controlled substance analogue.” Ala.Code § 13A-12-231(12). The violation is a felony with minimum criminal penalties (for 56-500 grams) of three years imprisonment and a \$50,000 fine.
Economic sanctions for NPS/analogue violations	Alabama law does not appear to contain any provisions specific to NPS or analogues. However, the term “drug-related nuisance” is defined to include “any property, in whole or in part, used or intended to be used to facilitate any violation of the controlled substance acts or any similar ordinance of any municipality in this state or a similar act of the United States or any other state.” Ala.Code § 6-5-155.1(3).
Legislation introduced in 2017	2017 Alabama HB 203 / SB 154 → creates felony violations for unlawfully distributing or trafficking in “fentanyl or any synthetic controlled substance Fentanyl analogue.” In addition to weight-based classifications, a trafficking charge may be brought where a person has 50 or more individual packages containing a qualifying substance.

<u>ALASKA</u>	
State controlled substance scheduling authority	Governor, with advice from the Alaska Controlled Substance Advisory Committee (“Committee”). AS § 11.71.120(a).
Emergency scheduling of NPS and /or analogues	Alaska law provides that if the Committee recommends changes to the state’s controlled substance list, the Governor is to introduce legislation to accomplish. Accordingly, there does not appear to be any means to emergency schedule NPS/analogues specifically, or controlled substances generally. In addition, there does not appear to be any provision requiring the scheduling (or objection to scheduling) of a substance designated, rescheduled, or deleted under federal law.
Advisory committee regarding NPS or analogues	There is a nine-person Committee established within the Alaska Department of Law. AS § 11.71.100. Among other things, the duties of the Committee include: (1) advising the Governor of the need to add, delete, or reschedule substances; and (2) reviewing and evaluating enforcement policies and practices of the Department of Public Safety and the Department of Law with regard to crimes involving controlled substances. AS § 11.71.110. There is no NPS/analogue-specific committee in the state.
Definition of controlled substance analogue	The term “analogue” is not used or defined in state law. However, state law criminalizes “illicit synthetic drugs.” AS § 17.21.010. Under the law, a “synthetic drug” is defined somewhat similar to a controlled substance analogue in that it is “(A) a chemical or chemical compound intended, when introduced into the human body, to mimic or simulate the effect of a drug or controlled substance; (B) in the form of (i) a crystalline or powder product in crystalline, loose powder, block, tablet, or capsule form; or (ii) plant material in granular, loose leaf, powder, or liquid form or used as a food additive; and; (C) not a controlled substance.” AS § 17.21.090.
Treatment of controlled substance analogues	Alaska criminalizes the advertisement, sale, or possession of certain “illicit synthetic drugs.” Otherwise, the law does not address analogues or provide any scheduling treatment.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Alaska’s schedules I and II, which were last amended in 2012, contain a few individually-listed NPS. AS § 11.71.140.

<u>ALASKA</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<p>A person may not possess, offer, display, market, advertise for sale, or sell an illicit synthetic drug. AS § 17.21.010. An offense is a violation, subject to a fine of up to \$500. AS § 17.21.030. A synthetic drug is “illicit” if: (1) the label is false, misleading, or does not specify the identity of substance or manufacturer/packer/distributor; and (2) the substance has one of the following characteristics:</p> <ul style="list-style-type: none"> • the packaging or labeling suggests that the user will achieve euphoria, a hallucination, mood enhancement, relaxation, stimulation, or another effect on the body; • the name or packaging uses images or labels suggesting that it is a controlled substance or has the effect of a controlled substance; • the synthetic drug resembles a controlled substance in appearance, in chemical structure, or composition; • the drug is marketed or advertised for a particular use or purpose and the cost of the synthetic drug is disproportionately higher than other products marketed or advertised for the same or similar use or purpose; • the contains a warning label stating or suggesting that the synthetic drug is in compliance with state laws regulating controlled substances; or • the synthetic drug is a product to which has been added a synthetic chemical or synthetic chemical compound that does not have a legitimate relationship to the advertised use of the product.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	2017 Alaska HB 24 / SB 20 → classifies U-47700 as a schedule IA controlled substance.

<u>ARIZONA</u>	
State controlled substance scheduling authority	Arizona law does not specifically address the person or entity who has controlled substance scheduling authority. Accordingly, it appears that the authority rests with the Legislature. Nevertheless, Arizona law provides that the state Board of Pharmacy “may promulgate necessary and reasonable rules relating to the registration and control of the manufacture, distribution and dispensing of controlled substances.” A.R.S. § 36-2521.
Emergency scheduling of NPS and /or analogues	Arizona law does not address the emergency scheduling of NPS/analogues specifically or controlled substances generally. State law also does not appear to contain any provision requiring the scheduling (or objection to scheduling) of a substance designated, rescheduled, or deleted under federal law.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	Arizona law does not define or use the term “controlled substance analogue” or something akin to it. However, Arizona criminal law defines and prohibits the possession, possession with intent to use, manufacturing, or distribution of an “imitation controlled substance.” A.R.S. §§ 13-3451, 13-3453, 13-3456. It is possible that state prosecutors use one or more of these provisions in conjunction with NPS/analogues.
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	Arizona’s list of “dangerous drugs” in the criminal code, which is separate from its list of controlled substances, includes “[f]entanyl mimetic substances that are any substances derived from fentanyl by any substitution in the phenethyl group, any substitution in the piperidine ring, any substitution in the aniline ring, any replacement of the phenyl portion of the phenethyl group, any replacement of the N-propionyl group or any combination of the above.” A.R.S. § 13-3401.

<u>ARIZONA</u>	
Method used to schedule NPS	Both Arizona’s controlled substance schedule I and its list of dangerous drugs in the criminal code contain a section relating to “cannabimimetic substances.” A.R.S. §§ 13-3401, 36-2512. The sections on cannabimimetic substances use some structural class definitions, although the extent of the definitions differ slightly. In the dangerous drug code section, there are structural class definitions for “N-methyltryptamine mimetic substances,” “cathinomimetic substances,” “methoxyphenethylamine mimetic substances,” and “phencyclidine mimetic substances.” A.R.S. § 13-3401.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Outside of penalties relating to imitation controlled substances, there do not appear to be any NPS- or analogue-specific criminal or civil penalties for violations.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	2017 Arizona HB 2033 (enacted; effective in August 2017) → among other things, the bill adds individual NPS and amends certain definitions of structural classes within the definition of cannabimimetic substances in both the list of dangerous drugs and schedule I.

<u>ARKANSAS</u>	
State controlled substance scheduling authority	Director of the Arkansas Department of Health (“Director”). A.C.A. § 5-64-201(a).
Emergency scheduling of NPS and /or analogues	There is no NPS- or analogue-specific scheduling law or rule in Arkansas. However, with respect to controlled substances generally, the Director may promulgate without action or approval of the State Board of Health an emergency rule to add, delete, or reschedule a substance. A.C.A. § 5-64-201(a)(1). In this case, the temporary action is effective for up to 180 days.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	Arkansas law defines “controlled substance analog” ¹ using the same three prongs as are in the definition in federal law (21 U.S.C.A. § 802(32)) and UCSA § 101(3), although the grammatical phrasing is different. In Arkansas, a controlled substance analog is either one of the first two prongs (substantially similar chemical structure or substantially similar actual effect on central nervous system) or the third prong (represented to have a substantially similar effect). A.C.A. § 5-64-414(a).
Treatment of controlled substance analogues	An analog is treated as a schedule I controlled substance if it is intended for human consumption. A.C.A. § 5-64-414(b).
Notice provision re analogues	Within 10 days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, a prosecuting attorney must notify the Director of information relevant to emergency scheduling. A.C.A. § 5-64-414(c).
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Schedule I contains a structural class definition for substituted cathinones. Schedule VI contains a structural class definition for synthetic cannabinoids, which are referred to in the schedule as “synthetic substances.” All other NPS appear to be scheduled individually. Ark. Admin. Code 007.07.2.

¹ Arkansas law uses the term “analog,” rather than “analogue.”

<u>ARKANSAS</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	There is no analog-specific penalty provision in Arkansas law. Arkansas regulations, however, make it unlawful for any person, retailer or distributor “to participate in the synthetic marijuana products market.” Ark. Admin. Code 007.15.8-IV. A violation is a criminal misdemeanor subject to a fine of \$100-\$500 and up to one month of jail. A violator may also face a civil penalty from the Board of Health up to \$1,000 per offense. Ark. Admin. Code 007.15.8-V. The term “synthetic marijuana products” is defined as “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.” Ark. Admin. Code 007.15.8-III(A).
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	Regulation containing the Arkansas list of controlled substance schedules was amended effective April 24, 2017 to add 16 NPS to schedule I, including several fentanyl derivatives.

<u>CALIFORNIA</u>	
State controlled substance scheduling authority	California law does not specifically address the person or entity who has controlled substance scheduling authority. Accordingly, it appears that the authority rests with the Legislature. Nevertheless, California law provides that the state Board of Pharmacy “shall administer and enforce” the Uniform Controlled Substances Act. Cal.Bus. & Prof.Code § 4011.
Emergency scheduling of NPS and /or analogues	California law does not appear to have a law or regulation addressing the emergency scheduling of NPS/analogues specifically, or controlled substances generally.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	A “controlled substance analog” ² is defined differently than either federal law or UCSA § 101(3). An analog is either: (1) a substance with a chemical structure substantially similar to the chemical structure of a schedule I or II substance or a “synthetic cannabinoid compound”; or (2) a substance which is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the effect of a schedule I or II substance or a synthetic cannabinoid compound. Cal.Health & Safety Code § 11401(b).
Treatment of controlled substance analogues	A controlled substance analog is treated the same as the schedule I or II controlled substance or the synthetic cannabinoid compound of which it is an analog. Cal.Health & Safety Code § 11401(a).
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	California’s statutory list of schedule I substances was last amended in 2002 and thus contains very few NPS. Any substances listed are listed individually. Cal.Health & Safety Code § 11054. Nevertheless, California law defines and uses the terms “synthetic cannabinoid compound” and “synthetic stimulant compound.” Cal.Health & Safety Code §§ 11357.5, 11375.5. Both of these terms are defined using structural class definitions very similar to the definitions proposed in NAMSDL’s Scheduling Novel Psychoactive Substances – Model Language document.

² California law uses the term “analog,” rather than “analogue.”

<u>CALIFORNIA</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • A person who sells, dispenses, distributes, furnishes, administers, gives, or offers to do any of the above with respect to either a synthetic cannabinoid compound or synthetic stimulant compound is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or by both that fine and imprisonment. Cal.Health & Safety Code §§ 11357.5, 11375.5. • Possession of a synthetic cannabinoid compound or synthetic stimulant compound is public offense, with a first offense punishable as an infraction with a fine of up to \$250. Subsequent offenses are subject to additional criminal penalties.
Economic sanctions for NPS/analogue violations	Although it is not specific to NPS/analogues, any building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance or analog “is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered.” Cal.Health & Safety Code § 11570.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 California SB 139→ bill would allow a city, county, or city and county, to regulate, by ordinance, the sale of a substance used as a recreational drug that poses a threat to human life or health. • 2017 California SB 176→ adds substances containing fentanyl or carfentanil to the list of substances (currently heroin, cocaine base, and cocaine) that are subject to additional jail time and/or fines above and beyond those of other controlled substances.

<u>COLORADO</u>	
State controlled substance scheduling authority	The Colorado General Assembly by bill, may add, delete, or reschedule substances. The Colorado Board of Pharmacy administers the “Standards and Schedules” part of Colorado’s Uniform Controlled Substances Act. C.R.S.A. § 18-18-201.
Emergency scheduling of NPS and /or analogues	Colorado law does not appear to have a law or regulation addressing the emergency scheduling of NPS/analogues specifically, or controlled substances generally.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ³ is defined using the same (or substantially similar) definition as is in UCSA § 101(3). C.R.S.A. § 18-18-102(6).
Treatment of controlled substance analogues	If “all or part of” an analog is intended for human consumption, the analog is treated as being in the same schedule (either I or II) as the controlled substance of which it is an analog. C.R.S.A. §§ 18-18-203(g), 18-18-204(g).
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Colorado statutory schedule I was last amended in 2012. To the extent that NPS are listed in the schedule, substances are listed individually. C.R.S.A. § 18-18-203. Colorado law defines the terms “synthetic cannabinoids” and “cathinones,” although the terms themselves are not contained in the controlled substance schedules. “Cathinones” are defined as “any synthetic or natural material containing any quantity of a cathinone chemical structure,” while “synthetic cannabinoid” means “any chemical compound that is chemically synthesized and either: (I) Has been demonstrated to have binding activity at one or more cannabinoid receptors; or (II) Is a chemical analog or isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoid receptors.” C.R.S.A. §§ 18-18-102(3.5), 18-18-102(34.5).

³ Colorado law uses the term “analog,” rather than “analogue.”

<u>COLORADO</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • It is a level 2 drug misdemeanor to use or possess any amount of “any synthetic cannabinoid or salvia divinorum.” C.R.S.A. § 18-18-406.1. • It is a level 3 drug felony to: (1) knowingly manufacture, dispense, sell, or distribute “any amount of any synthetic cannabinoid or salvia divinorum”; or (2) knowingly conspire with one or more other persons, to manufacture, dispense, or sell “any amount of any synthetic cannabinoid or salvia divinorum.” C.R.S.A. § 18-18-406.2. • A person who commits a “deceptive trade practice” by selling or attempting to sell “any product that is labeled as a ‘bath salt’ or any other trademark if the product contains any amount of any cathinones” must pay a civil penalty of \$10,000 - \$500,000 for each violation. C.R.S.A. § 6-1-112(d). • A person who commits a “deceptive trade practice” by selling or attempting to sell “any product that contains any amount of any synthetic cannabinoid” must pay a civil penalty of \$10,000 - \$500,000 for each violation. C.R.S.A. § 6-1-112(e).
Economic sanctions for NPS/analogue violations	<ul style="list-style-type: none"> • It is a “deceptive trade practice” to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser “any product that is labeled as a bath salt or any other trademark if the product contains any amount of any cathinones.” C.R.S.A. § 6-1-723. • It is a “deceptive trade practice” to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser “any product that contains any amount of any synthetic cannabinoid.” C.R.S.A. § 6-1-725.
Legislation introduced in 2017	None.

<u>CONNECTICUT</u>	
State controlled substance scheduling authority	Commissioner of Consumer Protection with advice from the Commission of Pharmacy. C.G.S.A. § 21a-243(c).
Emergency scheduling of NPS and /or analogues	Substances not scheduled by Connecticut but that are newly scheduled at the federal level are deemed to be temporarily scheduled for 240 days. C.G.S.A. § 21a-243(h). Otherwise, there does not appear to be a law or regulation addressing the emergency scheduling of NPS/analogues specifically, or controlled substances generally. Scheduling actions are done via regulation in Connecticut, however, and state regulations can be adopted on an emergency basis and remain effective for up to 180 days. C.G.S.A. § 4-168.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	Connecticut law does not appear to define a controlled substance analogue or something akin to it. The state also does not use or define the term “imitation controlled substance.”
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	The regulation containing schedule I lists some synthetic cannabinoids as follows “any material, compound, mixture or preparation which contains any quantity of a substance having a psychotropic response primarily by agonist activity at cannabinoid-specific receptors affecting the central nervous system.” Regs. Conn. State Agencies § 21a-243-7. To the extent other NPS are scheduled, they are listed individually.
Criminal or civil penalties for NPS/anologue violations (in addition to penalties due to scheduling treatment)	Connecticut law does not appear to have any NPS- or analogue-specific penalties.
Economic sanctions for NPS/anologue violations	None.

© 2017 Research is current as of May 2017. In order to ensure that the information contained herein is as current as possible, research is conducted using nationwide legal database software and individual state legislative websites. Please contact Jon Woodruff at (703) 836-6100, ext. 100 or jwoodruff@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS, 100 ½ East Main Street, Suite C, Manchester, IA 52057.

<u>CONNECTICUT</u>	
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Connecticut HB 5976→ provides that Title 21a of the general statutes be amended to increase penalties for dealing synthetic drugs that are controlled substances intended for human consumption and are structurally or pharmacologically similar to, or represented as being similar to heroin, opium or other opioids. • 2017 Connecticut HBs 5993/ 6628→ provides that Title 21a of the general statutes be amended to increase penalties for dealing synthetic drugs. • 2017 Connecticut HB 6641→ provides that Title 21a of the general statutes be amended to criminalize the false advertisement or misbranding of synthetic drug products. • 2017 Connecticut HBs 6000/6650→ provides that Title 21a of the general statutes be amended to increase the penalties for selling fentanyl and fentanyl derivatives, including furanyl fentanyl, by adding such substances to the definition of “narcotic substance.” • 2017 Connecticut HB 7290→ amends the definition of “narcotic substance” to add fentanyl and fentanyl derivatives in order to increase penalties for dealing such substances. • 2017 Connecticut SB 1039→ establishes the crime of manslaughter by causing a death of another person by drug overdose; makes the possession of a narcotic a class D felony; criminalizes the false labeling of synthetic drugs to include as illegally supplying a drug, a prescribed narcotic to a person for whom it is not prescribed, and to require opiates be labeled to better warn of addictive qualities.

<u>DELAWARE</u>	
State controlled substance scheduling authority	Secretary of the Delaware Department of State (“Secretary”). 16 Del.C. § 4711.
Emergency scheduling of NPS and /or analogues	There is no Delaware law or regulation that addresses emergency scheduling of NPS/analogues generally or controlled substances specifically. However, upon recommendation of the Committee (discussed below), the Secretary may adopt an emergency regulation that is effective for up to 120 days if imminent peril to the public health, safety or welfare requires such adoption. 24 Del. Admin. Code CSA 10.3.
Advisory committee regarding NPS or analogues	The Secretary is to appoint an advisory Controlled Substance Advisory Committee (“Committee”) to act in an advisory capacity regarding controlled substances. The Committee is not specific to NPS or analogues. 16 Del.C. § 4731(b).
Definition of controlled substance analogue	Delaware law defines “designer drug” to mean a substance that has a chemical structure substantially similar to that of a controlled substance or that was specifically designed to or may produce an effect substantially similar to that of a controlled substance. According to the definition examples of chemical classes in which “designer drugs” are found include “phenethylamines, N-substituted piperidines, morphinans, ecgonines, quinazolinones, substituted indoles, arylcycloalkylamines, cannabinoids, cathinones, and any synthetic analogue of a controlled substance.” 16 Del.C. § 4701(9).
Treatment of controlled substance analogues	There is no specific Delaware statute addressing the scheduling treatment of designer drugs. However, the definition of controlled substance specifically includes designer drugs. 16 Del.C. § 4701(6).
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	Delaware has a Drug Overdose Fatality Review Commission (“Commission”), whose purpose is to “investigate and review the facts and circumstances of all overdose deaths involving opiates, fentanyl or heroin which occur in Delaware” and “make recommendations to the Governor and General Assembly, at least annually, regarding those practices or conditions which impact the frequency of overdose deaths involving opiates, fentanyl or heroin, and steps that can be taken to reduce the frequency of such overdose deaths.” 16 Del.C. § 4799C.
Method used to schedule NPS	Statutory schedule I was last amended in 2012. To the extent listed, synthetic cannabinoids and synthetic cathinones are scheduled individually. 16 Del.C. § 4714.

<u>DELAWARE</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Designer drugs are specifically listed in the Delaware statute providing for “quantity tiers related to drug offenses.” Designer drug offenses are assigned the same quantity/dose tiers as MDMA. 16 Del.C. § 4751C.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	None.

<u>DISTRICT OF COLUMBIA</u>	
State controlled substance scheduling authority	By statute, the Mayor of the District of Columbia with provision for public notice and comment. DC ST § 48-902.01. The Mayor has delegated his/her authority to “register, regulate, and control the manufacture and distribution of controlled substances” to the Director of the Department of Health (“Director”). Mayor’s Order 98-49 (April 15, 1998).
Emergency scheduling of NPS and /or analogues	There is no law or regulation addressing the emergency scheduling of NPS/analogues specifically, or controlled substances generally. Nevertheless, the Director may schedule via emergency rulemaking and it appears that the temporary scheduling lasts for approximately four months.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analogue” is defined the same as, or substantially similarly as, the definition contained in federal law (21 U.S.C.A. § 802(32)). DC ST § 48-902.14(b).
Treatment of controlled substance analogues	To the extent that an analogue is intended for human consumption, it is treated as a schedule I controlled substance. DC ST § 48-902.14(a).
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.

<u>DISTRICT OF COLUMBIA</u>	
Method used to schedule NPS	District of Columbia’s regulation containing schedule I has a very thorough listing of NPS. Many NPS are listed individually. In addition, schedule I contains structural class definitions for synthetic cannabinoids, cathinones, and substituted tryptamines. 22-B DC ADC § 1201.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • There are no laws or regulations specifically related to controlled substance analogues. • Any entity that knowingly engages or attempts to engage in the purchase, sale, exchange, or any other form of commercial transaction involving a “synthetic drug,” is subject to a fine of \$10,000. DC ST § 47-2844(a-2). “Synthetic drug” means a product possessed, sold, or marketed “with the intent that it be used as a recreational drug, such that its consumption or ingestion produces effects on the central nervous system or brain function to change perception, mood, consciousness, cognition, or behavior in ways that are similar to the effects of marijuana, cocaine, amphetamines,” Schedule I drugs, or “compounds banned by District or federal synthetic drug laws.” The District statute includes a list of factors to be treated as “indicia that a product is being marketed with the intent that it be used as a recreational drug.” DC ST § 47-2844(a-2). • No person doing business in the District of Columbia may sell, offer for sale, allow the sale of, display for sale, possess, market, trade, barter, give, devise, or otherwise make or attempt to make available synthetic drugs, among other things. 17 DCMR § 900.1, et seq.
Economic sanctions for NPS/analogue violations	Any licensee who knowingly engages or attempts to engage in the purchase, sale, exchange, or any other form of commercial transaction involving a synthetic drug faces, among other things: (1) revocation of their business license(s) by the Mayor; (2) the closing of the premises by the Chief of Police for up to 96 hours without a prior hearing; and (3) submission of a remediation plan to prevent future occurrences. Subsequent offenses face enhanced penalties. DC ST § 47-2844(a-2).
Legislation introduced in 2017	None.

<u>FLORIDA</u>	
State controlled substance scheduling authority	Florida Attorney General with medical and scientific evaluations from the Departments of Health and Law Enforcement, as well as recommendations as to the classification of the substance. F.S.A. §§ 893.035, 893.0355.
Emergency scheduling of NPS and /or analogues	The Attorney General may temporarily schedule a substance into schedule I if it is necessary to avoid an imminent hazard to the public safety. Such rule remains in effect until it is permanently adopted by the Legislature, repealed, declared invalid, or June 30 of the following year passes and the Legislature has not adopted it permanently. F.S.A. § 893.035(7), (9).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ⁴ is defined the same as, or substantilly similar to, the definition in UCSA § 101(3). F.S.A. § 893.0356(2)(a).
Treatment of controlled substance analogues	An analog is treated “as the highest scheduled controlled substance of which it is a controlled substance analog.” F.S.A. § 893.0356(5).
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Florida’s statutory schedule I contains extensive structural class definitions of synthetic cannabinoids, substituted cathinones, substituted phenethylamines, N-Benzyl phenethylamine compounds, substituted tryptamines, and substituted phenylcyclohexylamines. The schedule also lists many NPS individually. F.S.A. § 893.03.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Florida law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.

⁴ Florida law uses the term “analog,” rather than “analogue.”

<u>FLORIDA</u>	
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Florida HB 183 / SB 424 → adds Mitragynine & 7-Hydroxymitragynine, constituents of Kratom, to schedule I. • 2017 Florida HB 477 / SB 150, → bill enhances existing penalties and creates new penalties for synthetic opioid drugs by: (1) adding certain fentanyl related controlled substances to the substances for which distribution that results in death and is the proximate cause of a user’s death, is punishable as murder; (2) adding a class of fentanyl derivatives and five “research drugs” to Schedule I; (3) creating a first degree felony for possession of 10 grams or more of certain Schedule II substances including certain fentanyl related substances; and (4) creating trafficking offenses for fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines. • 2017 Florida HB 1303, → prohibits specified offenses involving synthetic cannabinoids on or within specified distance of real property comprising public park; authorizes warrantless arrest for possession of synthetic cannabinoids if probable cause is present. • 2017 Florida SB 150, → among other things, creates the criminal penalties of “trafficking in fentanyl” and “trafficking in synthetic drugs.” • Fla. Admin. Code r. 2ER16-1 → adds U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide) to schedule I.

<u>GEORGIA</u>	
State controlled substance scheduling authority	Georgia Board of Pharmacy. Ga. Code Ann. § 16-13-22.
Emergency scheduling of NPS and /or analogues	There is no NPS- or analogue-specific law or regulation regarding emergency scheduling. However, emergency rulemaking, including controlled substance rulemaking, is allowed. Emergency rules remain effective for up to 120 days. Ga. Code Ann. § 50-13-4 (b).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	The term “controlled substance analog” ⁵ is used in a couple Georgia statutory provisions, but it is not defined. However, Georgia law defines and criminalizes anyone who “knowingly manufactures, distributes, or possesses with intent to distribute an imitation controlled substance.” Ga. Code Ann., § 16-13-30.2. It is possible that state prosecutors use one or more of these provisions in conjunction with NPS/analogues.
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None other than the inclusions of a fentanyl analog structural class in statutory schedule I. Ga. Code Ann. § 16-13-25(13).
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids, cathinones, fentanyl analogs, piperidinyl-sulfonamide, and 1-cyclohexyl-4-(1,2-diphenylethy)-piperazine (MT-45) are scheduled using structural class definitions. Ga. Code Ann. § 16-13-25(12)-(15). Other NPS are scheduled individually. Synthetic cannabinoids, substituted cathinones, and synthetic opioids are scheduled individually in Georgia’s regulations. Ga Comp. R. & Regs. 480-34-.04; 480-34-.05; 480-34-.10.

⁵ Georgia law uses the term “analog,” rather than “analogue.”

<u>GEORGIA</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Other than laws pertaining to imitation controlled substances, Georgia law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Georgia HB 213, → adds the sale, manufacture, delivery, or possession of fentanyl within the prohibition of trafficking certain drugs • 2017 Georgia HB 231 (enacted; effective April 2017) → among other things, adds fentanyl analog, piperidinyl-sulfonamide, and 1-cyclohexyl-4-(1,2-diphenylethy)-piperazine (MT-45) structural classes to statutory schedule I; adds other NPS to statutory schedule I.

<u>HAWAII</u>	
State controlled substance scheduling authority	Hawaii Legislature with recommendations from the Hawaii Department of Public Safety. On an emergency basis, scheduling actions may be made by the the Administrator of the narcotics enforcement division of the Department of Public Safety (“Administrator”). HRS § 329-11.
Emergency scheduling of NPS and /or analogues	Administrator may make an emergency scheduling by placing a substance into schedule I, II, III, IV, or V on a temporary basis, if “necessary to address or avoid a current or imminent danger to the health and safety of the public.” The action is effective until the end of the next regular session of the Legislature when it is nullified if the Legislature has not enacted a corresponding statutory change. HRS § 329-11(e).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	The term “controlled substance analogue” or something akin to it is not used or defined in Hawaii law. However, Hawaii law defines and criminalizes the manufacture, distribution, possession or use of an “imitation controlled substance.” HRS § 329C-2. It is possible that state prosecutors use one or more of these provisions in conjunction with NPS/analogues.
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, substituted cathinones are listed using structural class definitions. Syntehtic cannabindoids are listed using both structural class definitions and individually. HRS § 329-14.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Other than laws pertaining to imitation controlled substances, Hawaii law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.

© 2017 Research is current as of May 2017. In order to ensure that the information contained herein is as current as possible, research is conducted using nationwide legal database software and individual state legislative websites. Please contact Jon Woodruff at (703) 836-6100, ext. 100 or jwoodruff@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS, 100 ½ East Main Street, Suite C, Manchester, IA 52057.

<u>HAWAII</u>	
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Hawaii HB 1131 / SB 997 → updates the Uniform Controlled Substances Act to make it consistent with amendments in federal controlled substances law as required under the authority to schedule controlled substances • 2017 Hawaii HB 701 / SB 321 → amends the term “drug” for Operating a Vehicle Under the Influence of an Intoxicant (OVUII) offenses under Chapter 291E, Hawaii Revised Statutes, to include substances that may not be scheduled (such as emerging synthetic drugs).

<u>IDAHO</u>	
State controlled substance scheduling authority	Idaho Board of Pharmacy. I.C. § 37-2702.
Emergency scheduling of NPS and /or analogues	Scheduling actions take place via legislation and regulation. State law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. As in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the state, unless the Board of Pharmacy objects to such scheduling within 30 days of notice. I.C. § 37-2702(d).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	The term “controlled substance analogue” or something akin to it is not used or defined in Idaho law. However, Idaho law defines and criminalizes the possession or possession with intent to distribute a “simulated controlled substance.” I.C. § 37-2732(g). It is possible that state prosecutors use one or more of these provisions in conjunction with NPS/analogues.
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.

<u>IDAHO</u>	
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids are listed generally by structural class, with a few listed individually separately. Substituted cathinones are listed using a structural class definition. I.C. § 37-2705.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Other than laws pertaining to simulated controlled substances, Idaho law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	2017 Idaho HB 6 (enacted; effective February 2017)→ adds U-47700 to Schedule I and amends one part of synthetic cannabinoid structural class definition.

<u>ILLINOIS</u>	
State controlled substance scheduling authority	Illinois Department of Human Services (“Department”). 720 ILCS 570/201.
Emergency scheduling of NPS and /or analogues	The Department is authorized to schedule substances via administrative rule. Although there is no NPS- or analogue-specific scheduling rule, generally speaking, emergency regulations may be adopted for a temporary period not to exceed 150 days. 720 ILCS 570/100.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ⁶ is defined the same as, or substantially similarly too, the definition contained in federal law (21 U.S.C.A. § 802(32)). 720 ILCS 570/102(f-5).
Treatment of controlled substance analogues	Analogues are “treated in the same manner as the controlled substance to which it is substantially similar.” As analogues are defined in relation to schedule I or II substances only, this means that analogues are treated as if they are in schedule I or II, depending on the similar substance. 720 ILCS 570/402.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	Illinois criminal penalties concerning the improper manufacture, delivery, or possession with intent to deliver a controlled substance contain provisions specific to substances containing “fentanyl, or an analogue thereof.” 720 ILCS 570/401(a)(1.5).
Method used to schedule NPS	In statutory schedule I, some synthetic cannabinoids and synthetic cathinones are identified using structural class definitions. Other NPS in the schedule are listed individually. 720 ILCS 570/204.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • A person may not sell or offer for sale any “bath salts” in a retail mercantile establishment located within this State. 720 ILCS 542/20. “Bath salts” means “any synthetic or natural material containing any quantity of a cathinone chemical structure, including any analogues, salts, isomers, or salts of isomers of any synthetic or natural material containing a cathinone chemical structure.” 720 ILCS 542/15. A violation is a Class 3 felony for which a fine of not more than \$150,000 may be imposed. 720 ILCS 542/25.

⁶ Illinois law uses the term “analog,” rather than “analogue.”

<u>ILLINOIS</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment) (continued)	<ul style="list-style-type: none"> • A person who falsely advertises a “synthetic drug product” is guilty of a Class 3 felony and may be fined an amount not to exceed \$100,000. 410 ILCS 620/3.22. “Synthetic drug product” is any product that contains “a substance defined as a controlled substance under subsections (d) [certain hallucinogenic substances] and (e) [certain stimulant substances] of “ Illinois controlled substance schedule I. 410 ILCS 620/2.4(b).
Economic sanctions for NPS/analogue violations	The unit of local government that issued a retailer’s license for an establishment that violates the prohibition on selling “bath salts” may revoke the retailer’s license of that retail mercantile establishment upon conviction for a violation of this Act. 720 ILCS 542/25.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Illinois SB 702→ adds 3,4-Dichloro-N-[2-(dimethylamino)cyclohexy-N-methylbenzamide (some trade or other name: U-47700) as a Schedule I controlled substance. • 2017 Illinois HB 2534→ among other things, adds various synthetic drugs and cannabinoids to the list of schedule I controlled substances; defines “controlled substance analog” for the purpose of criminal provisions as a substance which is not approved by the United States Food and Drug Administration or, if approved, is not dispensed or possessed in accordance with State or federal law.

<u>INDIANA</u>	
State controlled substance scheduling authority	The General Assembly, with recommendations from the Indiana Board of Pharmacy (“Board”). IC § 35-48-2-1(a).
Emergency scheduling of NPS and /or analogues	The Board may adopt an emergency rule to declare that a substance is a “synthetic drug” if it has been: (1) scheduled federally; (2) scheduled by another state; or (3) determined that it has a high potential for abuse and no accepted medical benefit. As discussed below, “synthetic drug” is a defined term in Indiana that is incorporated into the state’s schedule I. A rule adopted in this manner remains effective until June 30 of the year following adoption. IC § 25-26-13-4.1
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	<ul style="list-style-type: none"> • “Controlled substance analog”⁷ is defined slightly differently than either the definition in UCSA § 101(3) or 21 U.S.C.A. § 802(32)). In Indiana, an analog is a substance: (1) the chemical structure of which is substantially similar to that of a controlled substance included in schedule I or II and that has; or (2) that a person represents or intends to have an effect on the central nervous system substantially similar to or greater than a schedule I or II substance. IC § 35-48-1-9.3. • “Synthetic drug lookalike substance,” is defined as a substance, other than a synthetic drug, which: (1) based on certain specified factors “would lead a reasonable person to believe to be a synthetic drug;” or (2) that a person knows or should have known was intended to be consumed; and the consumption of which the person knows or should have known to be intended to cause intoxication. IC § 35-31.5-2-321.5.
Treatment of controlled substance analogues	To the extent it is intended in whole or in part for human consumption, an analog is treated as a schedule I substance. IC § 35-48-4-0.5.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.

⁷ Indiana law uses the term “analog,” rather than “analogue.”

<u>INDIANA</u>	
Method used to schedule NPS	Statutory schedule I specifically incorporates “synthetic drugs” as schedule I substances. IC § 35-48-2-4. Although not in the controlled substance portion of Indiana’s criminal code, the term “synthetic drug” is defined using an extensive list of individual NPS as well as structural classes for synthetic cannabinoids and cathinones. IC § 35-31.5-2-321.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • Under Indiana law, there do not appear to be any analog-specific penalties for violations. • It is a criminal violation to be found “dealing in a synthetic drug or synthetic drug lookalike substance.” The extent of penalties (from Class A infraction to Level 5 felony) depend on the number of prior offenses as well as the violator’s intent to manufacture or deliver the lookalike substance. IC § 35-48-4-10.5. • It is a criminal violation to possess a synthetic drug or synthetic drug lookalike substance. The extent of the penalties (Class B infraction to Level 6 felony) depend upon the number of prior offenses as well as the violator’s knowledge of the substance’s identity as a synthetic drug or synthetic drug lookalike substance. IC § 35-48-4-11.5.
Economic sanctions for NPS/analogue violations	<ul style="list-style-type: none"> • In cases of a violation of dealing in a synthetic drug or synthetic drug lookalike substance, the court: (1) must recommend the suspension of the registered retail merchant certificate for the place of business for one year if the person’s violation of this section resulted in a criminal conviction; and (2) may recommend the suspension of the registered retail merchant certificate for the place of business for six (6) months if the person's violation of this section resulted in an adjudication that the person committed an infraction. IC § 35-48-4-10.5(f), (g). • Other penalties that may be ordered by a court in cases of a person’s sale or solicited sale of a synthetic drug or synthetic drug lookalike substance: (1) issue a restraining order against the person; (2) issue a preliminary injunction, temporary forfeiture, or closure order pending final decision on a permanent injunction; or (3) issue an order of abatement. IC § 32-30-8-10.5
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Indiana HB 1019 (enacted; effective July 2017) → adds the substance U-47700 to Schedule I. • 2017 Indiana SB 411 → makes possessing or dealing a substance that is a controlled substance analog an offense of the same level as possession of or dealing the controlled substance of which the substance is an analog; repeals crimes concerning synthetic drug lookalike substances.

<u>IOWA</u>	
State controlled substance scheduling authority	Iowa General Assembly with recommendations from the Iowa Board of Pharmacy (“Board”). I.C.A. § 124.201.
Emergency scheduling of NPS and /or analogues	Present Iowa law contains no specific provision regarding the scheduling of NPS or analogues. However, to the extent that a substance is newly scheduled federally, the Board can temporarily schedule that substance (or object to it) once 30 days pass. I.C.A. § 124.201(4). At present, the temporary scheduling lasts until 60 days after the next regular session of the General Assembly convenes. As of July 2017, the temporary scheduling will last for two years, unless the General Assembly makes the change permanent through legislation prior to expiration. 2017 Iowa Laws HF 296.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	The term “controlled substance analogue” or something akin to it is not used or defined in Iowa law. However, Iowa law defines and criminalizes the manufacture, distribution, possession or use of an “imitation controlled substance.” I.C.A. § 124A.1, et seq. (presently); I.C.A. §§ 124.101, 124.101B, 124.401 (as of July 2017). In newly enacted Iowa legislation, legislators made clear that it is their intent that state prosecutors use one or more of these provisions to criminalize the improper manufacture and sale of NPS/analogues.
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Statutory schedule I contains a listing for “cannabimimetic agents,” which includes structural class definitions for some synthetic cannabinoids. All other NPS in the schedule, to the extent listed, are listed individually. I.C.A. § 124.204.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Other than criminal provisions related to “imitation controlled substances,” Iowa law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.

<u>IOWA</u>	
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Iowa HF 296 (enacted; effective July 2017) → among other things adds NPS to statutory schedule I and modifies the penalties for imitation controlled substances. • 2017 Iowa SF 332 (enacted; effective April 2017) → among other things, adds NPS to statutory schedule I.

<u>KANSAS</u>	
State controlled substance scheduling authority	Kansas Legislature, with recommendations from Board of Pharmacy (“Board”). The Board may make scheduling actions by rule on an emergency basis. K.S.A. § 65-4102.
Emergency scheduling of NPS and /or analogues	Upon receipt of notice under K.S.A. § 21-5715 (discussed below) about a controlled substance analog, ⁸ the Board must initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The temporary scheduling expires on July 1 of the year following the year of adoption. K.S.A. § 65-4102(e).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	Kansas law defines “controlled substance analog” using the same three prongs as are in the definition in federal law (21 U.S.C.A. § 802(32)) and UCSA § 101(3), although there is a slight difference. In Kansas, the law makes clear that only one of the three prongs is necessary for a substance to be treated as an analog. K.S.A. § 65-4101(g).
Treatment of controlled substance analogues	There is no specific Kansas statute addressing the scheduling treatment of analogs. However, the term is included in the the statutes providing for criminal penalties associated with improper use of controlled substances.
Notice provision re analogues	Within 10 days after the initiation of prosecution with respect to a controlled substance analog by indictment, complaint or information, the prosecuting attorney must notify the Board of information relevant to emergency scheduling. K.S.A. § 21-5715.

⁸ Kansas law uses the term “analog,” rather than “analogue.”

NAMSDL – Novel Psychoactive Substances and Analogues: Summary of State Laws

<u>KANSAS</u>	
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids and substituted cathinones are scheduled via class structure definition. Other NPS, to the extent listed, are scheduled individually. K.S.A. § 65-4105.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Kansas law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Kansas SB 51 (enacted; effective May 2017)→ amends the definition of a controlled substance expands the authority of the Board to allow greater flexibility in the emergency scheduling of controlled substance analogs; adds several new substances to the controlled substance schedules, including synthetic opioids and updating existing synthetic cannabinoid class definitions. • 2017 Kansas SB 52→among other things, proposes to add substances included in schedules I.

<u>KENTUCKY</u>	
State controlled substance scheduling authority	Kentucky Cabinet for Health and Family Services (“Cabinet”). KRS § 218A.020.
Emergency scheduling of NPS and /or analogues	Currently, the Kentucky Office of Drug Control Policy may request that the Cabinet schedule a substance substantially similar to a synthetic cannabinoid or piperazine or a synthetic cathinone and the Cabinet must issue a written response within 60 days. KRS § 218A.020(5). As of July 2017, this process will expand to any controlled substance. 2017 Kentucky Laws Chapter 168.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analogue” is defined the same as (or substantially similar to) the definition in UCSA § 101(3).
Treatment of controlled substance analogues	There is no specific Kentucky statute addressing the scheduling treatment of analogues. However, the term is included in the the statutes providing for criminal penalties associated with improper use of controlled substances.
Notice provision re analogues	The law provides a mechanism by which the Kentucky Office of Drug Control Policy can request the Cabinet to schedule a substance. KRS § 218A.020(5).
Fentanyl-specific statutes or regulations	As of July 2017, Kentucky law will 2017 be amended in the following ways: <ul style="list-style-type: none"> • Defining “fentanyl,” “carfentanil,” and “fentanyl derivatives”; • Scheduling fentanyl derivatives as Schedule I controlled substances; • Amends law against importing heroin to include carfentanil, fentanyl, or fentanyl derivatives; • Amends law against trafficking controlled substances to make trafficking in any amount of fentanyl, carfentanil, or fentanyl derivatives subject to elevated penalties; • Amends law against aggravated trafficking of controlled substances to include carfentanil, fentanyl, or fentanyl derivatives. 2017 Kentucky Laws Chapter 168.

<u>KENTUCKY</u>	
Method used to schedule NPS	Statutory schedule I lists “synthetic drugs” as being included within the schedule. KRS § 218A.050. As of July 2017, statutory schedule I will also reference “any fentanyl derivative.” “Synthetic drugs” are defined as “any synthetic cannabinoids or piperazines or any synthetic cathinones.” KRS § 218A.010(49). Within the definitions, synthetic cannabinoids and piperazines, synthetic cathinones, and fentanyl derivatives are defined used structural classes. KRS § 218A.010(47), (48); 2017 Kentucky Laws Chapter 168. Via regulation, some synthetic cannabinoids are listed using structural classes. 902 Ky. Admin. Regs. 55:015.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • As of July 2017, new and/or enhanced penalties for fentanyl, carfentanil, and fentanyl derivatives, as discussed above. • Possession of synthetic drugs is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense. KRS § 218A.1430(2). • A person is guilty of trafficking in synthetic drugs when he or she knowingly and unlawfully traffics in synthetic drugs. A violation is a Class D felony for a first offense, and Class C felony for each subsequent offense. KRS § 218A.1430(1). • As of July 2017, a person is guilty of trafficking in a misrepresented controlled substance when he or she knowingly and unlawfully sells or distributes any Schedule I controlled substance, carfentanil, or fentanyl while misrepresenting the identity of it as being a legitimate pharmaceutical product. 2017 Kentucky Laws Chapter 168.
Economic sanctions for NPS/analogue violations	A conviction of a retail licensee, his agents, servants, or employees for allowing the illegal sale or use of controlled substances, including synthetic drugs, is a cause for which the license may be revoked. KRS § 243.500.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Kentucky HB 46→ amends Kentucky law to make trafficking in any amount of fentanyl or carfentanil subject to elevated penalties. • 2017 Kentucky HB 52→ amends Kentucky law to allow the Office of Drug Control Policy to request that the Cabinet for schedule fentanyl analogues not approved for human use by the United States Food and Drug Administration; amends Kentucky law to include fentanyl analogues not approved for human use by the Food and Drug Administration as a Schedule I controlled substance; amends the law to create the offense of aggravated fentanyl trafficking and to increase the penalties for trafficking in fentanyl.

<u>KENTUCKY</u>	
Legislation introduced in 2017 (continued)	<ul style="list-style-type: none"> • 2017 Kentucky HB 333 (enacted; effective July 2017) → amends Kentucky law with respect to fentanyl and fentanyl derivatives, as described above. • 902 KAR 55:015E (adopted; effective March 2017) → U-47700 added to schedule I via emergency regulation.

<u>LOUISIANA</u>	
State controlled substance scheduling authority	Louisiana Secretary of the Department of Health (“Secretary”). LSA-R.S. § 40:962.
Emergency scheduling of NPS and /or analogues	Although not specific to NPS or analogues, if the scheduling of a substance in Schedule I is “necessary to avoid an imminent peril to the public health, safety or welfare,” the Secretary may adopt an emergency rule adding the substance to Schedule I. LSA-R.S. § 40:962(H). It appears that the emergency rule can be effective permanently, although it is subject to review and potential challenge by state officers or other individuals. LSA-R.S. § 49:953(B).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analogue” is defined substantially similar to the definition in UCSA § 101(3). LSA-R.S. § 40:961(8).
Treatment of controlled substance analogues	To the extent intended for human consumption, analogues are treated as either schedule I or II substances. LSA-R.S. § 40:964.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cathinones are referenced by structural classes, as are synthetic cannabinoids, except for a few unclassified ones. LSA-R.S. § 40:964.

<u>LOUISIANA</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	With respect to criminal penalties for the unlawful distribution or possession with intent to distribute schedule I substances, synthetic cannabinoids are specifically referenced and treated the same as marijuana (with lower penalties than violations associated with narcotic drugs). With respect to more simple possession of synthetic cannabinoids, penalties for possession of synthetic cannabinoids are more severe than for possession of marijuana. LSA-R.S. § 40:966(B), (E).
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	2017 Louisiana SB 220→ among other things, amends criminal penalties associated with synthetic cannabinoids and substances containing both heroin and fentanyl.

<u>MAINE</u>	
State controlled substance scheduling authority	Although it is not directly specified by statute, the Maine Legislature, with respect to Schedule W, X, and Y drugs. The Maine Board of Pharmacy with respect to Schedule Z drugs. 17-A M.R.S.A. § 1102(4)(C).
Emergency scheduling of NPS and /or analogues	It does not appear that emergency or temporary scheduling of NPS/analogues specifically, or controlled substances generally, is addressed by Maine law or regulation.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	The term “controlled substance analogue” or something akin to it is not used or defined in Maine law. However, criminalizes the trafficking or furnishing of “counterfeit drugs.” 17-A M.R.S.A. §§ 1104, 1105-B. It is possible that state prosecutors use one or more of these provisions in conjunction with NPS/analogues.
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	Maine law addressing the unlawful possession of scheduled drugs has provisions that specifically reference possession of fentanyl powder. 17-A M.R.S.A. § 1107-A. The definitions of “traffic” and “furnish” with respect to drugs in the Maine criminal code both involve a particular amount of fentanyl powder. 17-A M.R.S.A. § 1101.
Method used to schedule NPS	Maine’s controlled substance schedules are lettered W, X, Y and Z. Certain synthetic hallucinogenic drugs are listed individually in Schedule W. Synthetic cannabinoids are defined by structural class (except for a few uncategorized ones) and listed in Schedule Z. 17-A M.R.S.A. § 1102.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Other than criminal penalties associated with “counterfeit drugs,” Maine law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.

© 2017 Research is current as of May 2017. In order to ensure that the information contained herein is as current as possible, research is conducted using nationwide legal database software and individual state legislative websites. Please contact Jon Woodruff at (703) 836-6100, ext. 100 or jwoodruff@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS, 100 ½ East Main Street, Suite C, Manchester, IA 52057.

<u>MAINE</u>	
Legislation introduced in 2017	2017 Maine SP 541 → the bill clarifies that any compound, mixture or preparation containing narcotic drugs in any quantity is a schedule W drug unless listed or described in another schedule; adds phenylpiperazine, mitragynine, U-47700, despropionyl fentanyl, furanylfentanyl and fluorofentanyl to the list of schedule W drugs.

<u>MARYLAND</u>	
State controlled substance scheduling authority	Maryland Department of Health and Mental Hygiene (“Department”). MD Code, Criminal Law, § 5- 202.
Emergency scheduling of NPS and /or analogues	Maryland law does not appear to contain any law relating to emergency scheduling of NPS/analogues specifically, or controlled substances generally. However, a new substance that is designated as a controlled substance under federal law is a similarly controlled dangerous substance under Maryland law unless the Department objects to the inclusion. MD Code, Criminal Law, § 5- 202(f).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled dangerous substance analogue” is defined slightly differently than in federal law or the UCSA. In Maryland, it is a two-pronged test, requiring similar chemical structure and effect on nervous system, but without any consideration of intended or represented effect. MD Code, Criminal Law, § 5-402(f).
Treatment of controlled substance analogues	Analogues, to the extent intended for human consumption, are specifically listed as part of schedule I. MD Code, Criminal Law, § 5-402.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	<ul style="list-style-type: none"> • There are enhanced penalties for the knowing violation of Maryland’s prohibition against the improper manufacture, distribution, or dispensing of a controlled dangerous substance with: (1) a mixture that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl; or (2) fentanyl or any analogue of fentanyl. The penalty is a felony and a conviction is subject to imprisonment not exceeding 10 years. MD Code, Criminal Law, § 5-608.1. • It is unlawful for a person to possess, or bring into the state, 4 grams or more of fentanyl or a fentanyl analogue. MD Code, Criminal Law, § 5-614 (a)(1)(xii).

<u>MARYLAND</u>	
Method used to schedule NPS	Statutory schedule I includes the term “cannabimimetic agents,” which are defined elsewhere in the state controlled substance law using a neurochemical approach along with specific examples. MD Code, Criminal Law, §§ 5-101(e), 5-402. Other NPS, to the extent listed, are scheduled individually. Also, the analogue definition is contained within schedule I.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Besides the fentanyl-related criminal provisions discussed above, Maryland law does not appear to contain other NPS- or analogue-specific penalty provisions for violations.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Maryland SB 539 (enacted; effective May 2017) → adds a criminal section concerning a mixture that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl or fentanyl or any analogue of fentanyl. • 2017 Maryland SB 619 → similar to SB 539. • 2017 Maryland HB 612 → creates a specific criminal penalty for distributing heroin or fentanyl, the use of which is a contributing cause of the death of another.

<u>MASSACHUSETTS</u>	
State controlled substance scheduling authority	Commissioner of Public Health (“Commissioner”). M.G.L.A. 94C § 2.
Emergency scheduling of NPS and /or analogues	Massachusetts does not appear to have any law relating to the emergency scheduling of NPS/analogues specifically, or controlled substances generally. Massachusetts regulations provide that state schedules are the same as federal schedules. As in many states, state law provides that a substance designated as a controlled substance under federal law must be similarly scheduled by the state. M.G.L.A. 94C § 2(a ½).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analogue” is defined in Massachusetts similarly to UCSA § 101(3), although in the state an analogue can be a substance in Classes A-E, rather than only Schedules I and II. M.G.L.A. 94C § 1.
Treatment of controlled substance analogues	An analogue is treated “as the Class A, B, C, D or E substance of which it is a controlled substance analogue.” M.G.L.A. 94C § 1.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	Any person who trafficks in fentanyl, “by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of more than 10 grams of fentanyl” faces punishment of up to 20 years in state prison. The term “fentanyl” includes any derivative of fentanyl and any mixture containing more than 10 grams of fentanyl or a derivative of fentanyl. M.G.L.A. 94C § 32E (c ½).
Method used to schedule NPS	In its statutes, Massachusetts designates “classes” of drugs (A-E) used for purposes of criminal penalties. Class C contains a reference to “cannabimimetic agents” that are defined using several synthetic cannabinoid structural classes. Otherwise, to the extent listed, NPS are classed individually. M.G.L.A. 94C § 31. In Massachusetts regulations, controlled substance schedules are defined to be identical to federal DEA schedules. CMR 700.002.

<u>MASSACHUSETTS</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Other than the fentanyl provision discussed above, Massachusetts law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Massachusetts HB 1 → among many other things, amends provision relating to fentanyl trafficking. • 2017 Massachusetts HB 710 → replaces defined term “controlled substance analogue” with the newly defined term “synthetic drug,” defined as a drug with properties and effects similar to a known hallucinogen or narcotic but having an altered chemical structure, including any substance within a structural group listed in “CLASS D.” • 2017 Massachusetts HB 975 → adds a section to Massachusetts law providing that a person who unlawfully distributes fentanyl or trafficks in fentanyl where a death results from the use of such fentanyl, shall be guilty of homicide by distribution of a controlled substance and shall be punished by imprisonment in the state prison for not less than 10 years and not more than 20 years and by a fine of not more than \$25,000. • 2017 Massachusetts HB 988 / SB 881 → amends the definition of fentanyl trafficking. • 2017 Massachusetts SB 889 → amends Massachusetts law to include multiple synthetic hallucinogenic substances in the Class D illegal controlled substances schedule.

<u>MICHIGAN</u>	
State controlled substance scheduling authority	Michigan Board of Pharmacy (referred to in the law as “Administrator”) with recommendations from a seven-member scientific advisory commission. M.C.L.A. §§ 333.7201 & 333.7206.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS/analogues, there is a mechanism under Michigan law for the emergency scheduling of controlled substances. If the Administrator is notified in writing by the Director of the Department of Community Health “that a substance constitutes an imminent danger,” the Administrator may schedule or reschedule the substance by emergency rule. M.C.L.A. § 333.7203(2).
Advisory committee regarding NPS or analogues	Although it is not specific to NPS or analogues, Michigan law creates a seven member “scientific advisory commission . . . to serve as a consultative and advisory body to the administrator in all matters relating to the classification, reclassification, addition to, or deletion from, all substances presently classified as controlled substances in schedules 1 to 5, or substances not presently controlled or yet to come into being.” M.C.L.A. § 333.7206(1).
Definition of controlled substance analogue	“Controlled substance analogue” is defined the same as or substantially similar to the definition contained in UCSA § 101(3). M.C.L.A. § 333.7104(3).
Treatment of controlled substance analogues	There is no specific Michigan statute addressing the scheduling treatment of analogues. However, the term is included in the the statutes providing for criminal penalties associated with improper use of controlled substances generally. M.C.L.A. §§ 333.7402 to 333.7404.
Notice provision re analogues	Although it is not specific to analogues, if the Director of the Department of Community Health determines that “an imminent danger to the health or lives of individuals in this state can be prevented or controlled” by the emergency scheduling of a controlled substance, the Director must notify the Director of the Department of Licensing and Regulatory Affairs and the Administrator in writing. M.C.L.A. § 333.2251(4).
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids and synthetic cathinones are defined using structural classes. Other NPS substances, to the extent listed, are scheduled individually. M.C.L.A. § 333.7212.

<u>MICHIGAN</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Unless authorized by the law, it is illegal to create, manufacture, deliver, or possess with intent to deliver “a counterfeit substance or a controlled substance analogue intended for human consumption.” If the substance involved is an analogue, a violation is a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$250,000.00, or both. M.C.L.A. § 333.7402.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	None.

<u>MINNESOTA</u>	
State controlled substance scheduling authority	Minnesota Board of Pharmacy (“Board”). M.S.A. § 152.02.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS/analogues, the Board may, by expedited rulemaking process, add a substance to Schedule I provided that it finds that the substance “has a high potential for abuse, has no currently accepted medical use in the United States, has a lack of accepted safety for use under medical supervision, has known adverse health effects, and is currently available for use within the state.” M.S.A. § 152.02(8b). Prior to becoming effective, a rule adopted in this fashion must be submitted to an administrative law judge. M.S.A. § 14.389.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ⁹ is defined the same as or substantially similar to the definition contained in UCSA § 101(3). M.S.A. § 152.01(23).
Treatment of controlled substance analogues	Statutory schedule I specifically includes an analog, “to the extent that it is implicitly or explicitly intended for human consumption.” M.S.A. § 152.02.
Notice provision re analogues	None.

⁹ Minnesota law uses the term “analog,” rather than “analogue.”

<u>MINNESOTA</u>	
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Synthetic cathinones and synthetic cannabinoids are included in statutory schedule I using structural class definitions. Otherwise, to the extent listed, NPS are scheduled individually. M.S.A. § 152.02.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	With respect to “synthetic cannabinoids”: (1) a person who unlawfully sells a synthetic cannabinoid for no remuneration is guilty of a gross misdemeanor; (2) a person who unlawfully sells a synthetic cannabinoid is guilty of a felony and if convicted may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both; and (3) a person who unlawfully possesses any amount of a synthetic cannabinoid is guilty of a misdemeanor. M.S.A. § 152.027(6). “Synthetic cannabinoid” is defined with respect to particular sections of schedule I.
Economic sanctions for NPS/analogue violations	If a person is convicted of selling a controlled substance or analog of a controlled substance “under the false pretense that the substance is legal,” the court must order the violator to pay restitution for the costs and expenses resulting from the crime. These costs include the medical costs of persons who consumed the substances sold by the offender and the reasonable costs incurred by public and private entities that provided an emergency response to a person who consumed the substances sold by the offender. M.S.A. § 152.0273.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Minnesota HF 470 (enacted; effective August 2017)→ among other things, adds several NPS to schedule I. • 2017 Minnesota HF 896 / SF 803 → among other things, includes the addition of some NPS to schedule I. • 2017 Minnesota HF 1875 / SF 1851→ NPS added to schedule I.

<u>MISSISSIPPI</u>	
State controlled substance scheduling authority	Mississippi Legislature with recommendations from the Mississippi Board of Health. Miss. Code Ann. § 41-29-111.
Emergency scheduling of NPS and /or analogues	Mississippi does not appear to have any law relating to the emergency scheduling of NPS/analogues specifically, or controlled substances generally.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	Mississippi law does not define or use the term “controlled substance analogue” or something akin to it. Mississippi law concerning the drug testing of employees indicates that an “illegal drug” includes “controlled substance analogs,” but that term does not appear to be defined in the Mississippi labor code or anywhere else. Miss. Code Ann. § 71-7-1.
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids and cathinones are listed using structural class definitions. Some cathinones are also scheduled individually. Other NPS, to the extent listed, are scheduled individually. Miss. Code. Ann. § 41–29–113.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Criminal penalties for growing, possessing, selling, or trafficking synthetic cannabinoids (or marijuana) are separated from the offenses related to other schedule I or II substances. Penalties for synthetic cannabinoids were recently amended to be more severe than for marijuana. Selling 10 or fewer grams of synthetic cannabinoids could earn a maximum \$3,000 fine and maximum three years in prison, while selling or trafficking 40 grams could earn a minimum \$20,000 fine and prison sentence of between five to 20 years. Miss. Code Ann. § 41-29-139.
Economic sanctions for NPS/analogue violations	None.

<u>MISSISSIPPI</u>	
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Mississippi HB 1031 → among other things, adds several NPS to schedule I. • 2017 Mississippi SB 2194 (enacted; effective July 2017)→ among other things, adds certain individual NPS to schedule I. • 2017 Mississippi SB 2277 → amends definition of “synthetic cathinone” in schedule I.

<u>MISSOURI</u>	
State controlled substance scheduling authority	Missouri Department of Health and Senior Services (“Department”). V.A.M.S. § 195.015.
Emergency scheduling of NPS and /or analogues	Missouri law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. As in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the state, unless the Department objects to such scheduling within 30 days of notice. V.A.M.S. § 195.015(4).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analogue” is defined the same as or substantially similar to the definition contained in UCSA § 101(3). V.A.M.S. § 195.010(6).
Treatment of controlled substance analogues	Analogues are treated as controlled substances in schedule I. V.A.M.S. § 195.022.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids are listed using structural class definitions. Other NPS, to the extent listed, are scheduled individually. V.A.M.S. § 195.017.

<u>MISSOURI</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Missouri law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	19 CSR 30-1.002 (adopted; effective May 2017)→ regulations to update the list of controlled substances to reflect statutory changes to federal schedules; includes numerous additions of NPS into controlled substance schedule I.

<u>MONTANA</u>	
State controlled substance scheduling authority	Montana Board of Pharmacy. MCA § 50-32-103.
Emergency scheduling of NPS and /or analogues	Montana law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. However, substances are scheduled via regulation, and so emergency scheduling using regulation may be possible.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Dangerous drug analogue” is defined as a material, compound, mixture, or preparation “that is structurally related to or chemically derived from any dangerous drug in Schedules I through V” or “that is expressly or impliedly represented to produce or does produce a physiological effect similar to or greater than the effect of a dangerous drug in Schedules I through V.” MCA § 50-32-101(7)(a).
Treatment of controlled substance analogues	Statutory schedule I explicitly includes dangerous drug analogues, to the extent such analogue is not listed in a different schedule. MCA § 50-32-222(10).
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In Montana’s statutory schedule I, synthetic cannabinoids are listed by structural class, using a neuro-chemical approach, and with some substances individually listed. Schedule I also lists substituted cathinones using a structural class definition. MCA § 50-32-222.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Montana law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	None.

<u>NEBRASKA</u>	
State controlled substance scheduling authority	Nebraska law does not appear to specify directly who has controlled substance schedule authority. Accordingly, it would appear to be the Nebraska Legislature.
Emergency scheduling of NPS and /or analogues	Nebraska law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	<ul style="list-style-type: none"> • “Controlled substance analogue” is defined somewhat differently than either federal law or UCSA § 101(3). In Nebraska, there is a two-pronged test requiring either a substantially similar chemical structure as a schedule I or II controlled substance or a substantially similar effect. Neb.Rev.St. § 28-401(30)(a). • “Lookalike substance” is defined as a substance that is not controlled, but “is either portrayed in such a manner by a person to lead another person to reasonably believe that it produces effects on the human body that replicate, mimic, or are intended to simulate the effects produced by a controlled substance” or that it possesses one or more of several listed characteristics. Neb.Rev.St. §28-401(44).
Treatment of controlled substance analogues	To the extent an analogue is intended for human consumption, it is treated as a schedule I controlled substance. Neb.Rev.St. § 28-405(f).
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In Nebraska’s statutory schedule I, a number of NPS are listed using structural class definitions, including synthetic cannabinoids, substituted phenethylamines, substituted tryptamines, and substituted cathinones. Neb.Rev.St. § 28-405.

<u>NEBRASKA</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • Nebraska law does not appear to contain any penalty provisions that relate specifically to NPS or analogues (at least using that term). • It is illegal for a person to offer, display, market, advertise for sale, or sell a lookalike substance. A violation is a Class IV felony in addition to any other applicable criminal offenses or penalties or civil remedies or penalties. Neb.Rev.St. § 28-471. • A person engages in a deceptive trade practice if in the manufacture, production, importation, distribution, promotion, display for sale, offer for sale, attempt to sell, or sale of a substance, the person: (1) makes a deceptive or misleading representation about a substance or fails to identify the contents of the package; or (2) causes confusion or misunderstanding as to the effects a substance causes when ingested. Neb.Rev.St. § 87-302(22).
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	2017 Nebraska Laws LB 487 (enacted; effective August 2017)→ includes U-47700 as a Schedule I controlled substance

<u>NEVADA</u>	
State controlled substance scheduling authority	Nevada Board of Pharmacy (“Board”). N.R.S. §§ 453.166, 453.176, 453.186, 453.196, 453.206, 453.211.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS or analogues, the Board “by extraordinary regulation” may schedule a substance in schedule I, “whether or not the substance is substantially similar to a controlled substance included in schedule I or II, if the Board finds that scheduling of the substance by extraordinary regulation is necessary to avoid an imminent hazard to the public safety and the substance is not in any other schedule.” The temporary scheduling of a substance in this manner expires after one year. N.R.S. § 453.2184.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ¹⁰ is defined by Nevada law the same as, or substantially similarly too, the manner defined in UCSA § 101(3). N.R.S. § 453.043.
Treatment of controlled substance analogues	To the extent an analog is intended for human consumption, it is treated as a substance included in schedule I. N.R.S. § 453.219.
Notice provision re analogues	Within 30 days after the initiation of prosecution with respect to an analog by indictment or information, a district attorney must notify the Board of information relevant to scheduling by extraordinary regulation. N.R.S. § 453.219.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Nevada’s controlled substance schedules are contained within regulations. Schedule I contains an extensive listing of individual NPS. NAC 453.510.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Nevada law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.

¹⁰ Nevada law uses the term “analog,” rather than “analogue.”

<u>NEVADA</u>	
Economic sanctions for NPS/analogue violations	Nevada law specifically provides that buildings used for the purpose of unlawfully selling, storing, manufacturing, or using controlled substances, including analogs, are nuisances subject to nuisance abatement actions. N.R.S. §§ 40.140, 202.450, 244.3603
Legislation introduced in 2017	NAC 453.510→ regulation containing controlled substance schedules amended, including the addition of and modification too several NPS.

<u>NEW HAMPSHIRE</u>	
State controlled substance scheduling authority	Commissioner of the Department of Health and Human Services (“Commissioner”). N.H. Rev. Stat. § 318-B:1-a.
Emergency scheduling of NPS and /or analogues	New Hampshire does not appear to have its own set of controlled substance schedules, instead relying on federal schedules. However, separate from controlled substance schedules, New Hampshire law uses the term “synthetic drug,” which is defined in a manner similar to a controlled substance listing. There is a explicit scheduling provision specific to “synthetic drugs,” although it does not address scheduling in emergency fashion. The provision does contain language similar to other states that the Commissioner must control a synthetic drug that has been designated, rescheduled, or deleted under federal law or object to it. N.H. Rev. Stat. § 359-O:6.
Advisory committee regarding NPS or analogues	The Governor's Commission on Alcohol and Drug Abuse Prevention, Treatment, and Recovery must prepare a report, including recommendations for policies to be implemented for coordinating public awareness of and education in the dangers of synthetic drugs and other emerging or designer synthetic drug substances. N.H. Rev. Stat. § 12-J:4 (II-a).
Definition of controlled substance analogue	“Controlled drug analog” ¹¹ is defined in New Hampshire law somewhat differently than either federal law or UCSA § 101(3). In New Hampshire, an analog involves a two-pronged test, requiring both a substantially similar chemical structure and for the substance to be designed to produce a similar effect. N.H. Rev. Stat. § 318-B:1.
Treatment of controlled substance analogues	There is no specific New Hampshire statute addressing the scheduling treatment of analogs. However, the term is included in the the statutes providing for criminal penalties associated with improper use of controlled substances generally. N.H. Rev. Stat. § 318-B:26.
Notice provision re analogues	None.

¹¹ New Hampshire law uses the term “analog,” rather than “analogue.”

<u>NEW HAMPSHIRE</u>	
Fentanyl-specific statutes or regulations	New Hampshire law defines the term “fentanyl class drug” with reference to a listing of specific substances. N.H. Rev. Stat. § 318-B:1 (XI-a.). These drugs are assigned the same criminal penalties as are heroin or crack cocaine. N.H. Rev. Stat. § 318-B:26.
Method used to schedule NPS	New Hampshire does not have its own schedules of controlled substances. Similar to Indiana, New Hampshire defines the term “synthetic drug” in a manner similar to a controlled substance listing. In New Hampshire, synthetic drug is defined using a very extensive listing of individual substances and structural class definitions. It includes synthetic cannabinoids, synthetic cathinones, and other synthetic psychoactive substances. N.H. Rev. Stat. § 359-O:2(IV).
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • It is illegal to sell, barter, give, publicly display for sale or attempt to sell, possess, or transport, any material, compound, mixture, or preparation “which contains any quantity of a synthetic drug.” A violation results in a fine of \$500, plus penalty assessment, along with seizure of the illegal substances. N.H. Rev. Stat. §§ 359-O:3, 359-O:5. • An alcoholic beverage licensee who sells or distributes any substance containing a synthetic drug is guilty of a violation and faces a fine of up to \$1,000 for each violation, plus penalty assessments. N.H. Rev. Stat. § 179:63.
Economic sanctions for NPS/analogue violations	A food service or alcohol license is subject to revocation if a licensee sells or distributes any substance containing a synthetic drug. N.H. Rev. Stat. §§ 143-A:9-b, 179:63.
Legislation introduced in 2017	2017 New Hampshire HB 153 → establishes a criminal penalty for causing the death of another person by providing heroin or fentanyl to such person.

<u>NEW JERSEY</u>	
State controlled substance scheduling authority	Director of the Division of Consumer Affairs in the Department of Law and Public Safety (“Director”). N.J.S.A. § 24:21-3.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS or analogues, the may adopt emergency orders relative to controlled dangerous substances that are in effect for 270 days. N.J.S.A. § 24:21-31. As in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the state, unless the Director objects to such scheduling within 30 days of notice. N.J.S.A. § 24:21-3(c).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ¹² is defined in New Jersey law somewhat differently than either federal law or UCSA § 101(3). In New Jersey, an analog involves a two-pronged test, requiring both a substantially similar chemical structure and for the substance to be designed to produce a similar effect. N.J.S.A. § 2C:35-2.
Treatment of controlled substance analogues	There is no specific New Jersey statute addressing the scheduling treatment of analogs. However, the term is included in the the statutes providing for criminal penalties associated with improper use of controlled substances generally. N.J.S.A. §§ 2C:35-3, 2C:35-4, 2C:35-5.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Statutory schedule I was last amended in 2008. To the extent any NPS are listed in that schedule, they are scheduled individually. N.J.S.A. § 24:21-5. In the schedule I contained in regulation, synthetic cannabinoids are scheduled using structural class definitions. Other NPS, to the extent listed, are scheduled individually. N.J.A.C. 13:45H–10.1.

¹² New Jersey law uses the term “analog,” rather than “analogue.”

<u>NEW JERSEY</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • It is unlawful for a person to knowingly manufacture, distribute, dispense or possess substances containing mephedrone or methylenedioxymethcathinone (commonly used in bath salts). A violation is a second- or third-degree crime, depending on amount. N.J.S.A. § 2C:35-5.3a. • It is unlawful to knowingly or purposely to manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute, or dispense a “synthetic cannabinoid.” “Synthetic cannabinoid” is defined using structural classes. A violation is a second- or third-degree crime, depending on amount. N.J.S.A. § 2C:35-5.3b. • It is unlawful for any person, knowingly or purposely, to obtain or possess a synthetic cannabinoid. A violation is a third- or fourth-degree crime, depending on amount. N.J.S.A. § 2C:35-5.3c. • It is unlawful for any person, knowingly or purposely, to obtain, or to possess, substances containing: 4-methylmethcathinone (mephedrone, 4-MMC); 3,4-methylenedioxypropylvalerone (MDPV); 3,4-methylenedioxypropylmethcathinone (methylone, MDMC), 4-methoxymethcathinone (methedrone, bk-PMMA, PMMC); 3-fluoromethcathinone (3-FMC); or 4-fluoromethcathinone (flephedrone, 4-FMC). A violation is a third- or fourth-degree crime, depending on amounts. N.J.S.A. § 2C:35-10.3a.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2016 New Jersey AB 2176 / SB 156 → criminalizes possession and sale of alphapyrrolidinopentiophenone (alpha-PVP), commonly known as “flakka” or “flocka.” • 2016 New Jersey AB 2425 / SB 1026 → increases penalties for unlawfully manufacturing, distributing, or dispensing fentanyl. Under the bill, the penalties would match the penalties for manufacturing, distributing, or dispensing heroin or cocaine under current law. • 2016 New Jersey AB 4367 → criminalizes the manufacture, sale, and possession of controlled dangerous substance U-47700. • N.J.A.C. 13:45H-10.1 → proposed regulation to add certain fentanyl derivatives to schedule I.

<u>NEW MEXICO</u>	
State controlled substance scheduling authority	New Mexico Board of Pharmacy (“Board”). N. M. S. A. § 30-31-5.
Emergency scheduling of NPS and /or analogues	New Mexico law does not appear to contain any law concerning the emergency scheduling of NPS/analogues specifically, or controlled substances generally. The Board has authority to promulgate regulations regarding controlled substances, and so there is presumably a general method available for emergency rulemaking.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ¹³ is defined in New Mexico law somewhat differently than either federal law or UCSA § 101(3). In New Mexico, an analog involves a two-pronged test, requiring both a substantially similar chemical structure as a schedule I-V substance and for the substance to be designed to produce a similar effect. N. M. S. A. § 30-31-2.
Treatment of controlled substance analogues	Analogues are treated as if they are in the same schedule as that of associated controlled substance. N. M. S. A. § 30-31-2.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids are scheduled individually. N. M. S. A. § 30-31-6. In the regulation containing schedule I, synthetic cannabinoids are listed using both structural class definitions and individually. All other NPS, to the extent listed, are scheduled individually. N.M. Admin. Code 16.19.20.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	New Mexico law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.

¹³ New Mexico law uses the term “analog,” rather than “analogue.”

<u>NEW MEXICO</u>	
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 New Mexico HB 38→ establishes as an additional unfair practice the sale of a natural or synthetic substance (including a drug) that the seller knew or should have known would have as a primary use the production of an altered mental state, when that substance’s specified use (on its label, packaging, or instructions) was otherwise. • NMAC 16.19.20.65 (adopted; effective March 2017)→ adds 10 substances, including NPS, to the opium derivatives section of the state’s list of schedule I controlled substances. Adds nine NPS to the synthetic cannabinoid section of the state’s list of schedule I controlled substances.

<u>NEW YORK</u>	
State controlled substance scheduling authority	Legislature and Commissioner of the Department of Health Public (“Commissioner”). N.Y. Public Health Law § 3308.
Emergency scheduling of NPS and /or analogues	New York law does not appear to address the emergency scheduling of NPS/analogues specifically or controlled substances generally. However, the New York Public Health and Health Planning Council (“Council”) is authorized to establish, amend and repeal sanitary regulations subject to the approval of the Commissioner. Under this authority, the Council has issued regulations which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. 10 NYCRR 9.1 to 9.6.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	New York law does not define or use the term “controlled substance analogue” or something akin to it. However, New York criminal law defines and prohibits the manufacture, sale, or possession with the intent to sell an “imitation controlled substance.” N.Y. Public Health Law § 3383(2). It is possible that state prosecutors use one or more of these provisions in conjunction with NPS/analogues.
Treatment of controlled substance analogues	N/A

<u>NEW YORK</u>	
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, to the extent NPS are listed, they are scheduled individually. N.Y. Public Health Law § 3306. Although it is not in the controlled substance schedules, as discussed below, New York regulations prohibit the possession, manufacture, distribution, sale or offer of sale of “synthetic phenethylamines” and “synthetic cannabinoids.” Synthetic cannabinoids are defined using structural classes, while synthetic phenethylamines are listed individually.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	According to regulations, it is “unlawful for any individual or entity to possess, manufacture, distribute, sell or offer to sell any synthetic phenethylamine or synthetic cannabinoid or product containing the same.” The regulation does not contain a specific penalty, but rather says that a violation “is subject to all civil and criminal penalties as provided for by law.” 10 NYCRR Part 9.2, 9.4.
Economic sanctions for NPS/analogue violations	In the event of a continuing or repeated violation of the regulation prohibiting the sale or manufacture of synthetic phenethylamines or cannabinoids, the Commissioner may issue an order to close the establishment. 10 NYCRR 9.5.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 New York AB 316 / SB 933 → designates certain substances as schedule I opiate controlled substances. • 2017 New York AB 1384 → adds cannabimimetic agents to the schedule of controlled substances. • 2017 New York AB 1609 / SB 3829 → relates to synthetic cannabinoids, synthetic cannabinoid analog and substituted cathinones and prohibits the production and sale thereof. • 2017 New York AB 2970 / SB 2722 → provides that a controlled substance analogue shall be deemed to be the controlled substance to which it is substantially similar or mimics. • 2017 New York AB 3273 / SB 748 → relates to synthetic cannabinoid. • 2017 New York AB 3708 → relates to the criminal possession of fentanyl. • 2017 New York AB 4056 / SB 1246 → directs the commissioner of health to establish and maintain an electronic database, accessible to the public, of known synthetic cannabinoids.

<u>NEW YORK</u>	
Legislation introduced in 2017 (continued)	<ul style="list-style-type: none"> • 2017 New York AB 4760 / SB 738 → relates to criminalizing the sale, use and possession of synthetic drugs. • 2017 New York AB 6623 / SB 5619 → prohibits the sale and distribution of synthetic cannabinoids; and establishes a statewide synthetic cannabinoid surrender program. • 2017 New York AB 6649 → amends public health law and the penal law, in relation to synthetic cannabinoids and synthetic cathinones. • 2017 New York AB 7749 / SB 5357 → adds numerous substances, including NPS to controlled substance schedule. • 2017 New York SB 4527 → relates to adding controlled substance analogues to the definition of controlled substances. • 2017 New York SB 3518 → relates to controlled substances; defines synthetic cannabis; criminal provisions relating to synthetic cannabis.

<u>NORTH CAROLINA</u>	
State controlled substance scheduling authority	Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (“Commission”). N.C.G.S.A. § 90-88.
Emergency scheduling of NPS and /or analogues	North Carolina law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. As in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the state, unless the Commission objects to such scheduling within 30 days of notice. N.C.G.S.A. § 90-88(d).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analogue” is defined the same as, or substantially similarly to, the definition contained in federal law. 21 U.S.C.A. § 802(32). N.C.G.S.A. § 90-87(5a).
Treatment of controlled substance analogues	An analogue, to the extent intended for human consumption, is treated for the purposes of any North Carolina as a schedule I controlled substance. N.C.G.S.A. § 90-89.1.
Notice provision re analogues	None.

<u>NORTH CAROLINA</u>	
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, to the extent listed, NPS are scheduled individually. N.C.G.S.A. § 90-89. In statutory schedule VI, synthetic cannabinoids are listed using structural class definitions. N.C.G.S.A. § 90-94.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	North Carolina law does not appear to contain any law providing for criminal or civil penalties for violations associated with analogues. Within North Carolina’s law concerning controlled substance violations, there is a specific provision for “synthetic cannabinoids.” It appears that the criminal penalties for synthetic cannabinoids are more severe than for marijuana, but less severe than other controlled substances. N.C.G.S.A. § 90-95(d).
Economic sanctions for NPS/analogue violations	There is an excise tax place on “unauthorized” controlled substances possessed by dealers, which includes \$3.50 “for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this [sub]section, or synthetic cannabinoids.” N.C.G.S.A. § 105-113.107(a)(1a).
Legislation introduced in 2017	2017 North Carolina HB 464 / SB 347 → revises the schedule of controlled substances to add synthetic fentanyls, designer hallucinogenics, synthetic cannabinoids, system depressants, and other substances.

<u>NORTH DAKOTA</u>	
State controlled substance scheduling authority	North Dakota Board of Pharmacy (“Board”). NDCC, § 19-03.1-02.
Emergency scheduling of NPS and /or analogues	North Dakota law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. As in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the state, unless the Board objects to such scheduling within 30 days of notice. NDCC, 19-03.1-02(4).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ¹⁴ is defined the same as, or substantially to, the definition in UCSA § 101(3). NDCC, 19-03.1-01(7).
Treatment of controlled substance analogues	There is no specific North Dakota statute addressing the scheduling treatment of analogs. However, the term is included in the the statutes providing for criminal penalties associated with improper use of controlled substances generally. NDCC, §§ 19-03.1-22.5 to 19-03.1-23.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	Statutory schedule I contains the following structural class definition for fentanyl derivatives: “unless specifically excepted or unless listed in another schedule or are not FDA approved drugs, and are derived from N-(1-(2-Phenylethyl)-4-piperidinyl)-N-phenylpropanamide (Fentanyl) by any substitution on or replacement of the phenethyl group, any substitution on the piperidine ring, any substitution on or replacement of the propanamide group, any substitution on the anilido phenyl group, or any combination of the above.” NDCC, 19-03.1-05(3).
Method used to schedule NPS	In statutory schedule I, fentanyl derivatives, synthetic cannabinoids, substituted phenethylamines, substituted tryptamines, and substituted cathinones are listed using structural class definitions with individual examples. NDCC, 19-03.1-05.

¹⁴ North Dakota law uses the term “analog,” rather than “analogue.”

<u>NORTH DAKOTA</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	An individual who intentionally uses a controlled substance analog is guilty of a class C felony, unless the individual obtains the analog directly from a practitioner or pursuant to a valid prescription or order of a practitioner. NDCC, 19-03.1-22.5.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 North Dakota HB 1041 (enacted; effective April 2017)→ among other things, reduces the criminal penalty for a first offense of using a controlled substance analog from a Class C felony to a Class A misdemeanor. • 2017 North Dakota SB 2096 (enacted; effective March 2017)→ among other things, adds a number of NPS to statutory schedule I, including a structural class definition of fentanyl derivatives.

<u>OHIO</u>	
State controlled substance scheduling authority	Ohio Board of Pharmacy. R.C. § 3719.44.
Emergency scheduling of NPS and /or analogues	Ohio law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. The Board can take scheduling action via regulation and emergency regulation. However, changes made to the federal controlled substance schedules are automatically adopted into the Ohio schedules. R.C. § 3719.43.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ¹⁵ is defined the same as, or substantially similarly to, the definition in UCSA § 101(3). R.C. § 3719.01(HH).
Treatment of controlled substance analogues	To the extent an analog is intended for human consumption, it is treated as a schedule I controlled substance. R.C. § 3719.013.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids and substituted cathinones are scheduled using structural class definitions. R.C. § 3719.41. Additional substances added to schedule I through regulation appear to contain a neurochemical approach to synthetic cannabinoids. OAC 4729-11-02(B).
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Within Ohio’s statute concerning controlled substance trafficking offenses, there is a specific subsection addressing “trafficking in a controlled substance analog.” R.C. § 2925.03(C)(8).
Economic sanctions for NPS/analogue violations	None.

¹⁵ Ohio law uses the term “analog,” rather than “analogue.”

<u>OHIO</u>	
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Ohio HB 141 → provides that causing or contributing to the death of another person as a result of the offender's sale, distribution, dispensation, or administration of a controlled substance or controlled substance analog is a violation of the offense of involuntary manslaughter and to make this offense a strict liability offense. • 2017 Ohio Senate Bill No. 1 → increases penalties for drug trafficking violations, drug possession violations, and aggravated funding of drug trafficking when the drug involved in the offense is a fentanyl-related compound.

<u>OKLAHOMA</u>	
State controlled substance scheduling authority	Oklahoma Legislature, with recommendations from the Oklahoma Board of Pharmacy (“Board”). The Board may classify new substances as controlled substances after notice and hearing, provided that the new rule is submitted to the next regular session of the Legislature. 63 Okl.St. Ann. § 2-201(B), (C).
Emergency scheduling of NPS and /or analogues	Oklahoma law appears to contain no specific provision regarding the emergency scheduling of NPS/analogues specifically. As noted above, the Board may classify new substances as controlled substances after notice and hearing, provided that the new rule is submitted to the next regular session of the Legislature. 63 Okl.St. Ann. § 2-201(B).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Synthetic controlled substance” is defined the same as, or substantially similarly to, the definition of “controlled substance analogue” contained in federal law (21 U.S.C.A. § 802(32)). 63 Okl.St. Ann. § 2-101(37).
Treatment of controlled substance analogues	Oklahoma law does not appear to address the scheduling treatment of synthetic controlled substances. However, as discussed below, there is a criminal penalty provision that specifically applies to such substances.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.

<u>OKLAHOMA</u>	
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids are scheduled both individually and using structural class definitions. Other NPS, to the extent listed, are scheduled individually. 63 Okl.St. Ann. § 2-204.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Except when authorized by the FDA, it is unlawful for any person to manufacture, cultivate, distribute, or possess with intent to distribute a synthetic controlled substance. A violation is a felony, subject to a fine of up to \$25,000, a prison term up to a life sentence, and an additional fine of \$100,000. 63 Okl.St. Ann. § 2-401(C).
Economic sanctions for NPS/analogue violations	Synthetic controlled substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act are subject to forfeiture. 63 Okl.St. Ann. § 2-503.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Oklahoma HB 1772, → among other things, adds U-47700 to schedule I and makes possession of it a felony. • 2017 Oklahoma SB 770 → expands controlled substance schedules to include certain substances.

<u>OREGON</u>	
State controlled substance scheduling authority	Oregon Board of Pharmacy (“Board”). O.R.S. § 475.035.
Emergency scheduling of NPS and /or analogues	Oregon law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. The Board can take scheduling action via emergency regulation, which remains effective for 180 days.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ¹⁶ is defined slightly differently than in federal law or the UCSA. In Oregon, it is a two-pronged test, requiring similar chemical structure and effect on nervous system, but without any consideration of intended or represented effect. O.R.S. § 475.908(3).
Treatment of controlled substance analogues	Oregon law does not appear to contain any law that addresses the scheduling treatment of an analog.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Oregon’s controlled substance schedules, which are contained in regulation, expressly incorporate federal schedules. In Oregon’s schedules, synthetic cannabinoids and cathinones are scheduled using structural class definitions. OAR 855-080-0021.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Oregon law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	None.

¹⁶ Oregon law uses the term “analog,” rather than “analogue.”

<u>PENNSYLVANIA</u>	
State controlled substance scheduling authority	Pennsylvania Secretary of Health (“Secretary”). 35 P.S. § 780-103.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS/analogues, if the Secretary finds that the scheduling of a substance “is necessary to avoid an imminent hazard to public safety,” the Secretary schedule a previously unscheduled substance. The temporary scheduling lasts for one year, although the Secretary can extend the scheduling for another year by issuing a notice. 35 P.S. § 780-103(d).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Designer drug” is defined somewhat differently than either the federal law or UCSA definition of controlled substance analogue. In Pennsylvania, there is a two-pronged test requiring either a substantially similar chemical structure as a schedule I, II, or III controlled substance or a substantially similar effect. Stated examples of designer drugs include “Phenethylamines, N-substituted piperidines, morphinans, ecgonines, quinazolinones, substituted indoles and arylcycloalkylamines.” 35 P.S. § 780-102.
Treatment of controlled substance analogues	Pennsylvania law does not appear to address the scheduling treatment of designer drugs. However, as discussed below, there is a criminal penalty provision that specifically applies to such substances.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	Pennsylvania’s statutory schedule I contains a specific listing for “fentanyl derivatives,” which are described as drugs non-approved drugs “structurally derived from N-(1-(2-phenethyl)-4-piperidinyl)-N-phenyl-propanamide.” 35 P.S. § 780-104.
Method used to schedule NPS	In statutory schedule I, substituted cathinones and synthetic cannabinoids are scheduled using structural class definitions. The listing of synthetic cannabinoids also contains a neuro-chemical definition. Schedule I also contains a listing of individual fentanyl derivatives. Other NPS, to the extent listed, are scheduled individually. 35 P.S. § 780-104.

<u>PENNSYLVANIA</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	The “knowing or intentional manufacture, distribution, possession with intent to distribute, or possession of a designer drug,” is illegal. A violation is a felony subject to imprisonment for up to 15 years and/or a fine of up to \$250,000. 35 P.S. § 780-113(36).
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	None.

<u>RHODE ISLAND</u>	
State controlled substance scheduling authority	Rhode Island Director of Health. R.I. Gen.Laws, § 21-28-2.01.
Emergency scheduling of NPS and /or analogues	Scheduling actions take place via legislation and regulation. Rhode Island appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. However, as in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the state, unless the Director objects to such scheduling within 60 days of notice. R.I. Gen.Laws § 21-28-2.01(c).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	Rhode Island law does not define or use the term “controlled substance analogue” or something akin to it. However, Rhode Island criminal law defines and prohibits the possession, possession with intent to use, manufacturing, or distribution of an “imitation controlled substance.” R.I. Gen.Laws § 21-28-4.01 (d). It is possible that state prosecutors use one or more of these provisions in conjunction with NPS/analogues.
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids or piperazines and synthetic cathinones are scheduled using structural class definitions. Other NPS, to the extent listed, are scheduled individually. R.I. Gen.Laws § 21-28-2.08.

<u>RHODE ISLAND</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • Other than penalties associated with “imitation controlled substances,” there do not appear to be any Rhode Island laws that apply only to analogues or enhance penalties for violations associated with them. • It is unlawful for a person to manufacture, sell, or possess with intent to manufacture, or sell more than one ounce of a mixture of substance “containing a detectable amount of synthetic drugs.” A violation is a felony, and for amounts between one ounce and one kilogram, a violator can be imprisoned for up to 50 years and fined up to \$500,000. If the amount involved is more than one kilogram, the term of imprisonment is up to life and the fine can be up to \$1 million. R.I. Gen.Laws §§ 21-28-4.01.1, 21-28-4.01.2. The term “synthetic drugs” is defined as “any synthetic cannabinoids or piperazines or any synthetic cathinones as provided for in schedule I.” R.I. Gen.Laws § 21-28-1.02(43).
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Rhode Island HB 5035 → adds the synthetic opioid U-47700 to the list of Schedule I controlled substances • 2017 Rhode Island HB 5517 → provides penalties for the possession, manufacture, sale or delivery of more than one ounce mixture or substance containing a detectable amount of fentanyl. • 2017 Rhode Island HB 5738 → includes fentanyl analogs and synthetic opioids into Schedule I and Schedule II of the list of uniform controlled substances. • 2017 Rhode Island SB 805 → provides that it is illegal to possess, manufacture, sell, or deliver more than one ounce of a mixture or substance containing a detectable amount of fentanyl as a controlled substance. • 2017 Rhode Island SB 812 → includes fentanyl analogs and synthetic opioids into Schedule I and Schedule II of the list of uniform controlled substances.

<u>SOUTH CAROLINA</u>	
State controlled substance scheduling authority	When in session, the South Carolina General Assembly with recommendations from the South Carolina Department of Health and Environmental Control (“Department”). When the General Assembly is not in session, the the Department may schedule substances after providing notice and a hearing to all interested parties. S.C. Code § 44-53-160.
Emergency scheduling of NPS and /or analogues	South Carolina appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. However, as in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the Department. S.C. Code § 44-53-160(C).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analogue” is defined somewhat differently than either the federal law or UCSA definition of analogue. In South Carolina, there is a two-pronged test requiring either a substantially similar chemical structure as a schedule I, II, or III controlled substance or a substantially similar effect. S.C. Code § 44-53-110(7).
Treatment of controlled substance analogues	South Carolina law does not appear to address the scheduling treatment of analogues. However, controlled substance penalty provisions apply to analogues.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids and synthetic cannabinoids are scheduled using structural class definitions. Others NPS, to the extent listed, are scheduled individually. S.C. Code § 44-53-190.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	South Carolina law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.

© 2017 Research is current as of May 2017. In order to ensure that the information contained herein is as current as possible, research is conducted using nationwide legal database software and individual state legislative websites. Please contact Jon Woodruff at (703) 836-6100, ext. 100 or jwoodruff@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS, 100 ½ East Main Street, Suite C, Manchester, IA 52057.

<u>SOUTH CAROLINA</u>	
Legislation introduced in 2017	2017 South Carolina HB 3882 / SB 83→ adds to the definition of involuntary manslaughter the sale or delivery of controlled substances or their analogues that cause the death of the user.

<u>SOUTH DAKOTA</u>	
State controlled substance scheduling authority	South Dakota Legislature, with recommendations from the South Dakota Department of Health. SDCL § 34-20B-27.
Emergency scheduling of NPS and /or analogues	South Dakota law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	If it is intended for human consumption, a “controlled substance analogue” is defined similarly to the definition of analogue contained in federal law (21 U.S.C.A. § 802 (32)). In addition, an analogue can be either: (1) “a substance that differs in its chemical structure to a controlled substance listed in or added to the schedule designated in schedule I or II only by substituting one or more hydrogens with halogens or by substituting one halogen with a different halogen;” or (2) “a substance that is an alkyl homolog of a controlled substance listed in or added to schedule I or II.” SDCL § 34-20B-1(22).
Treatment of controlled substance analogues	An analogue is to be treated as a controlled substance in schedule I. SDCL § 34-20B-3.1.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids, substituted cathinones, substituted phenethylamines, and substituted tryptamines all are scheduled using structural class definitions with examples. Other NPS, to the extent listed, are scheduled individually. SDCL § 34-20B-14.

<u>SOUTH DAKOTA</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	South Dakota law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	2017 South Dakota HB 1041 (enacted; effective February 2017)→ among other things, adds several NPS to schedule I.

<u>TENNESSEE</u>	
State controlled substance scheduling authority	Tennessee Commissioner of Mental Health and Substance Abuse Services (“Commissioner”) with agreement of the Tennessee Commissioner of Health. T. C. A. § 39-17-403.
Emergency scheduling of NPS and /or analogues	Tennessee law appears to contain no specific provision regarding the emergency scheduling of controlled substances in general, or NPS/analogues specifically. As in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the state, unless the Commissioner objects to such scheduling within 30 days of notice. T. C. A. § 39-17-403(d).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analogue” is defined somewhat differently than the definition in either federal law or the UCSA. In Tennessee, there is a two-pronged test that requires both the same effect on the nervous system as a controlled substance and either: (1) a chemical structure that is a derivative or structural analogue of the chemical structure of a controlled substance; or (2) is prohibited by Tennessee’s law addressing methcathinone. T. C. A. § 39-17-454.
Treatment of controlled substance analogues	Tennessee law does not appear to address the scheduling treatment of analogues. However, as discussed below, there are penalty provisions associated with violations.
Notice provision re analogues	None.

<u>TENNESSEE</u>	
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, all NPS, including “cannabimimetic agents” are listed individually. Synthetic cannabinoids and synthetic cathinones are not scheduled by structural class definition, but there are other criminal statutes that do define those terms using structural classes, as discussed below. T. C. A. § 39-17-406.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • It is unlawful to knowingly produce, manufacture, distribute, possess, or possess with intent to produce, manufacture, or distribute certain “synthetic cannabinoids.” Synthetic cannabinoids are defined using structural class definitions. A first violation is a Class D felony. T. C. A. § 39-17-438. • It is unlawful to knowingly produce, manufacture, distribute, sell, offer for sale, or possess any capsule, pill, or other product “composed of or containing any amount of any compound, other than bupropion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification” in certain ways, using synthetic cathinone structural class definition. A violation is a Class A misdemeanor. T. C. A. § 39-17-452. • It is unlawful to knowingly manufacture, deliver, dispense or sell a controlled substance analogue or to possess a controlled substance analogue with the intent to manufacture, deliver, dispense or sell such substance. A violation is a Class D felony. T. C. A. § 39-17-454(c),(g). • It is an offense to knowingly possess or casually exchange a small amount of a controlled substance analogue not in excess of one (1) gram. A violation is a Class A misdemeanor. T. C. A. § 39-17-454(d),(g). • It is an offense for a person to represent, orally or in writing, advertise, infer or intend that a controlled substance analogue has the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance. A violation is a Class A misdemeanor. T. C. A. § 39-17-454(f), (g).
Economic sanctions for NPS/analogue violations	There is a tax “levied on and payable by any merchant of unauthorized substances,” which includes: (1) \$200 for each gram, or fraction thereof, of any controlled substance analogue sold by weight; and (2) \$200 for each ten (10) dosage units, or fraction thereof, of any other controlled substance analogue that is not sold by weight. T. C. A. § 67-4-2803.

<u>TENNESSEE</u>	
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Tennessee HB 337 / SB 192→ as introduced, classifies the synthetic opioid “U-47700” as a Schedule I controlled substance • 2017 Tennessee HB 583 / SB 825→ as introduced, increases the criminal penalty for the sale or manufacture of fentanyl from a Class C felony to a Class B felony.

<u>TEXAS</u>	
State controlled substance scheduling authority	Commissioner of Public Health with approval of the Texas Board of Health (“Commissioner”). V.T.C.A., Health & Safety Code § 481.034.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS or analogues, the Commissioner may emergency schedule a substance as a controlled substance upon a determination that the action “is necessary to avoid an imminent hazard to the public safety.” The emergency scheduling lasts until September 1 of each odd-numbered year for any scheduling that occurs before January 1 of that year. V.T.C.A., Health & Safety Code § 481.0355.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analogue” is defined in Texas law somewhat differently than either federal law or UCSA § 101(3). In Texas, an analog involves a two-pronged test, requiring both a substantially similar chemical structure as a schedule I, schedule II, Penalty Group 1, Penalty Group 1-A, Penalty Group 2, or Penalty Group 2-A and for the substance to be designed to produce a similar effect. V.T.C.A., Health & Safety Code § 481.002.
Treatment of controlled substance analogues	An analogue is treated as part of the same Penalty Group as the substance of which it is an analog. V.T.C.A., Health & Safety Code § 481.106.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.

<u>TEXAS</u>	
Method used to schedule NPS	Statutory schedule I contains a structural class definition for “cannabimimetic agents.” Other NPS, to the extent listed, are scheduled individually. V.T.C.A., Health & Safety Code § 481.032. Within the Texas criminal code, substances are classified by Penalty Group, and Penalty Group 2-A contains structural class definitions of synthetic cannabinoids. V.T.C.A., Health & Safety Code § 481.1031.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	The term “false, misleading, or deceptive acts or practices” includes, in the production, sale, distribution, or promotion of “a synthetic substance that produces and is intended to produce an effect” similar to, or in excess of, the effect of a controlled substance or controlled substance analogue: (1) making a deceptive representation or designation about the synthetic substance; or (2) causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested. V.T.C.A., Bus. & C. § 17.46(30).
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Texas HB 2612→ provides that a person who produces, distributes, sells, or provides certain synthetic substances to others or who aids in such activities may be held civilly liable; authorizes district and county attorneys to act under the Deceptive Trade Practices-Consumer Protection Act with respect to these substances. • 2017 Texas HB 2671 / SB 2176→ relating to the placement of certain substances in Penalty Groups 1 and 3 of the Texas Controlled Substances Act for the purposes of prosecution of criminal offenses involving those substances. • 2017 Texas HB 2704→ relating to a study on the use of portable testing equipment to identify synthetic drugs. • 2017 Texas SB 341→ relating to the consequences of the possession of illegal synthetic cannabinoids on a holder of or applicant for certain alcoholic beverage licenses and liability of a person who provides, sells, or serves a synthetic cannabinoid to another person.

<u>UTAH</u>	
State controlled substance scheduling authority	Utah law does not contain a statute directly addressing the authority to schedule controlled substances. Accordingly, scheduling authority appears to reside with the Legislature.
Emergency scheduling of NPS and /or analogues	Utah law does not appear to address the emergency scheduling of NPS/analogues specifically, or controlled substances generally.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ¹⁷ is defined the same as, or substantially similarly too, the definition contained in federal law (21 U.S.C.A. § 802(32)). U.C.A. § 58-37-2(g).
Treatment of controlled substance analogues	Utah law does not contain any provision addressing the scheduling treatment of analogs.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	To the extent listed, NPS are scheduled individually in statutory schedule I across three different statutes. U.C.A. §§ 58-37-4, 58-37-4.2, 58-37-5.5.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Violations related to controlled substance analogs receive the same criminal penalties as violations involving schedule I or II substances. Otherwise, Utah law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them. U.C.A. § 58-37-8.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	2017 Utah HB 110 (enacted; effective March 2017)→ adds several individual NPS to schedule I.

¹⁷ Utah law uses the term “analog,” rather than “analogue.”

<u>VERMONT</u>	
State controlled substance scheduling authority	Vermont Board of Health. 18 V.S.A. § 4202.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS or analogues, Vermont law concerning “regulated drugs” indicates that emergency rules may be adopted without notice by the Commissioner of Health. 18 V.S.A. § 4202. Such rules remain in effect for up to 120 days. 3 V.S.A. § 844.
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	Vermont law does not appear to define “controlled substance analogue” or something akin to it. The state also does not use or define the term “imitation controlled substance.”
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	Under Vermont law, substances are identified as “regulated drugs,” rather than as part of numerical controlled substance schedules. In the regulations identifying regulated drugs, a neuro-chemical definition of “cannabimimetic agents” is used. Also, “cathinone derivatives” are listed using a structural class definition. Other NPS substances, to the extent listed, are listed individually. Vt. Admin. Code 12-5-23:4.0 to 7.0.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Vermont law does not appear to contain any NPS- or analogue-specific laws that enhance penalties for violations.
Economic sanctions for NPS/analogue violations	None.

<u>VERMONT</u>	
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 Vermont SB 22→ proposes to increase the penalties for possessing, selling, dispensing, or trafficking fentanyl. • Proposed regulation adding new drugs and other chemical substances to regulated drug list including acetylfentanyl, and newly emerged synthetic recreational drugs

<u>VIRGINIA</u>	
State controlled substance scheduling authority	Virginia Board of Pharmacy (“Board”). VA Code Ann. § 54.1-3443.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS or analogues, if the Board, in consultation with the Virginia Department of Forensic Science, determines that a substance should be placed into schedule I or II, the Board may use a more expedient rulemaking process after giving notice of all substances it intends to schedule by regulation. The scheduling of any substance in this manner expires after 18 months unless the scheduling has been adopted by statute. VA Code Ann. § 54.1-3443(D).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ¹⁸ is defined by Virginia law the same as, or substantially similarly too, the definition in UCSA § 101(3). VA Code Ann. § 54.1-3401.
Treatment of controlled substance analogues	To the extent that an analog is intended for human consumption, it is treated as a Schedule I or II substances, depending on the substance for which it is an analog. VA Code Ann. § 54.1-3456.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.

¹⁸ Virginia law uses the term “analog,” rather than “analogue.”

<u>VIRGINIA</u>	
Method used to schedule NPS	Statutory schedule I lists synthetic cannabinoids using structural class definitions, although the term used in Virginia law is “cannabimimetic agents.” All other NPS, to the extent listed, appear to be scheduled individually. VA Code Ann. § 54.1-3446. Virginia regulations contain a listing of individual substances that have been placed into schedule I temporarily (via the method described above), including several NPS. 18 VAC 110-20-322.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Virginia law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2016 Virginia HB 1610 / SB 1546 (enacted; effective July 2017)→ permanently adds certain substances, including NPS, to schedule I. • 18 VAC 110-20- 322 (adopted; various effective dates)→ temporary scheduling of 20+ NPS substances into schedule I.

<u>WASHINGTON</u>	
State controlled substance scheduling authority	Pharmacy Quality Assurance Commission (“Commission”). RCWA § 69.50.201.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS or analogues, the Commission may schedule a substance in Schedule I on an emergency basis if the Commission finds it is necessary “to avoid an imminent hazard to the public safety and the substance is not included in any other schedule.” The emergency scheduling expires after one year. RCWA § 69.50.201(e).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	“Controlled substance analog” ¹⁹ is defined in Washington law the same as, or substantially similarly to, the definition in UCSA § 101(3). RCWA § 69.50.101(f).
Treatment of controlled substance analogues	To the extent an analog is intended for human consumption, it is treated as a schedule I controlled substance. RCWA § 69.50.214.
Notice provision re analogues	Within thirty days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, the prosecuting attorney must notify the Commission of information relevant to emergency scheduling. RCWA § 69.50.214.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, to the extent that any NPS are listed, they are scheduled individually. RCWA § 69.50.204.

¹⁹ Washington law uses the term “analog,” rather than “analogue.”

<u>WASHINGTON</u>	
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	<ul style="list-style-type: none"> • It is an unfair or deceptive practice for any person or entity to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser any product that contains any amount of any synthetic cannabinoid. “Synthetic cannabinoid” includes any chemical compound identified in the schedules or by the Commission. RCWA § 69.50.455. • In addition to other civil or criminal penalties, a person who violates Washington law by distributing, dispensing, manufacturing, displaying for sale, offering for sale, attempting to sell, or selling to a purchaser any product that contains any amount of any synthetic cannabinoid, must be fined between \$10,000 - \$500,000. The minimum fine is \$25,000 if the purchaser is under age 18 and more than two years younger than the seller. RCWA § 69.50.430
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	None.

<u>WEST VIRGINIA</u>	
State controlled substance scheduling authority	West Virginia Legislature, based upon recommendations from the West Virginia Board of Pharmacy (“Board”) made prior to the start of legislative session. W. Va. Code, § 60A-2-201(a).
Emergency scheduling of NPS and /or analogues	Although not specific to NPS or analogues, in between regular legislative sessions, the Board, on an emergency basis, may add to or delete from the schedules of controlled substances “based upon the recommendations and approval of the federal food, drug and cosmetic agency, and shall report such actions on the first day of the regular legislative session immediately following said actions.” W. Va. Code, § 60A-2-201(a). In addition, if any substance is designated, rescheduled, or deleted as a controlled substance under federal laws, the Board “shall recommend similar control of such substance to the Legislature.” W. Va. Code, § 60A-2-201(d).
Advisory committee regarding NPS or analogues	None.
Definition of controlled substance analogue	West Virginia law defines an “analogue” as “a substance that, in relation to a controlled substance, has a substantially similar chemical structure.” W. Va. Code, § 60A-1-101(c). In addition, West Virginia law defines and prohibits the possession, possession with intent to use, manufacturing, or distribution of an “imitation controlled substance.” W. Va. Code, §§ 60A-1-101(g), 60A-4-401(d). It is possible that state prosecutors use one or more of these provisions in conjunction with NPS/analogues.
Treatment of controlled substance analogues	Although the term analogue is defined, there does not appear to be a specific provision in West Virginia law that uses it.
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	As of early July 2017, West Virginia law will criminalize the unlawful manufacture, delivery, transport into state, or possession of fentanyl. W. Va. Code, § 60A-4-414. In addition, as of the same date, “fentanyl analog or derivative,” ²⁰ defined as “any substance which has a chemical structure which is substantially similar to the chemical structure of fentanyl,” will be added to statutory schedule I. 2017 West Virginia Laws HB 2329.

²⁰ In this section of the code, West Virginia law uses the word “analog,” rather than “analogue.”

<u>WEST VIRGINIA</u>	
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids are listed individually and by structural class, with some overlapping. Substituted cathinones are scheduled via class definition. There is also a (potential) neuro chemical definition regarding compounds that are cannabinoid receptor type 1 agonists at the end of the statute W. Va. Code, § 60A-2-204.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Other than the newly enacted legislation concerning fentanyl, West Virginia law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	<ul style="list-style-type: none"> • 2017 West Virginia HB 2329 (enacted; effective July 2017)→ adds fentanyl analog or derivative to schedule I; criminalizes the unlawful production, manufacture or possession of fentanyl, its derivatives, or any Schedule I substance that is misrepresented. • 2017 West Virginia HB 2526 (enacted; effective July 2017)→ among other things, adds (via individual listing) synthetic phenethylamines, synthetic opioids, opioid receptor antagonists, and additional NPS to schedule I.

<u>WISCONSIN</u>	
State controlled substance scheduling authority	Wisconsin Controlled Substances Board (“Board”). W.S.A. § 961.11.
Emergency scheduling of NPS and /or analogues	Although it is not specific to NPS or analogs, the Board may place a substance into schedule I on an emergency basis if it is “necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule.” W.S.A. 961.11 (4m). The temporary scheduling lasts for up to one year.
Advisory committee regarding NPS or analogues	Although it is not specific to NPS or analogs, the Board has controlled substance scheduling authority in Wisconsin.
Definition of controlled substance analogue	“Controlled substance analog” ²¹ is defined using the same (or substantially similar) definition as is in UCSA § 101(3). W.S.A. § 961.01 (4m).
Treatment of controlled substance analogues	To the extent it is intended for human consumption, a controlled substance analog is treated as a schedule I substance. W.S.A. § 961.25.
Notice provision re analogues	No later than 60 days after the commencement of a prosecution concerning a controlled substance analog, the district attorney shall provide the Board with information relevant to emergency scheduling to the substance at issue. W.S.A. § 961.25.
Fentanyl-specific statutes or regulations	None.
Method used to schedule NPS	In statutory schedule I, synthetic cannabinoids and substituted cathinones are defined via structural class, with additional ones not categorized. W.S.A. § 961.14. Wisconsin regulations contain additions to statutory schedules, including the addition of several individual NPS. Wis. Adm. Code s CSB 2.01, et seq.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Wisconsin law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.

²¹ Wisconsin law uses the term “analog,” rather than “analogue.”

<u>WISCONSIN</u>	
Legislation introduced in 2017	2017 Wisconsin AB 355 / SB 262 → adds fentanyl analogs to the synthetic opiates category under schedule I and reorganizes some substances from the general synthetic opiates category to the specific fentanyl analog category; as with other schedule I substances, a person who possesses a fentanyl analog is guilty of a Class I felony and a person who manufactures, distributes, or delivers a fentanyl analog is guilty of a Class E felony.

<u>WYOMING</u>	
State controlled substance scheduling authority	Attorney General as Commissioner of Drugs and Substances Control (“Commissioner”) with advice from advisory board on drugs and substances control. W.S. §§ 35-7-1003, 35-7-1005, 1011.
Emergency scheduling of NPS and /or analogues	Wyoming law contains no NPS- or analogue-specific law concerning emergency scheduling. However, the Commissioner has the authority to add, delete, and reschedule substances pursuant to the Wyoming Administrative Procedure Act, which allows substances to be scheduled in emergency fashion for up to 120 days. In addition, as in many states, state law provides that a substance designated, rescheduled, or deleted as a controlled substance under federal law must be similarly scheduled by the state, unless the Commissioner objects to such scheduling within 30 days of notice. W.S. §§ 35-7-1011(d).
Advisory committee regarding NPS or analogues	Although it is not specific to NPS or analogue issues, Wyoming law creates an “advisory board on drugs and substances control” (“Board”) for the purpose of assisting and advising the Commissioner. One purpose of the Board is to advise the Commissioner on which substances to declare as controlled drugs. W.S. § 35-7-1005.
Definition of controlled substance analogue	Wyoming law does not appear to define or use the term “controlled substance analogue” or something akin to it. State law also does not define or use the term “imitation controlled substance.”
Treatment of controlled substance analogues	N/A
Notice provision re analogues	None.
Fentanyl-specific statutes or regulations	None.

<u>WYOMING</u>	
Method used to schedule NPS	Generally speaking, NPS are listed individually in schedule I. However structural class definitions are used for a few derivatives of synthetic cannabinoids. W.S. § 35-7-1014.
Criminal or civil penalties for NPS/analogue violations (in addition to penalties due to scheduling treatment)	Wyoming law does not appear to contain any laws that apply only to NPS/analogues or enhance penalties for violations associated with them.
Economic sanctions for NPS/analogue violations	None.
Legislation introduced in 2017	WY ADC ATTG SICS Ch. 1 s 1, 2, 3 → emergency regulations adopted in January and May 2017 to schedule temporarily certain synthetic cannabinoids, synthetic opioids, synthetic opioid analgesics, and analgesics.