

UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of

**Scheduling 4-OH-DiPT, 5-MeO-AMT, 5-MeO-MiPT, 5-MeO-DET, and DiPT**

**Docket No. 22-15**

**BRIEFING ORDER AND SECOND ORDER MODIFYING ORDER FOR  
PREHEARING STATEMENTS**

On January 14, 2022, the Drug Enforcement Administration (DEA) published a Notice of Proposed Rulemaking (NPRM), with the docket number DEA-623, titled “Schedules of Controlled Substances: Placement of 4-hydroxy-*N,N*-diisopropyltryptamine (4-OH-DiPT), 5-methoxy-*alpha*-methyltryptamine (5-MeO-AMT), 5-methoxy-*N*-methyl-*N*-isopropyltryptamine (5-MeO-MiPT), 5-methoxy-*N,N*-diethyltryptamine (5-MeO-DET), and *N,N*-diisopropyltryptamine (DiPT) in Schedule I.” 87 Fed. Reg. 2376 (2022). The NPRM proposes to place the five tryptamine hallucinogens (4-OH-DiPT, 5-MeO-AMT, 5-MeO-MiPT, 5-MeO-DET, and DiPT) in schedule I of the Controlled Substances Act. *Id.*

Four parties filed Requests for Hearing (RFH) in this matter: Panacea Plant Sciences (Panacea), Dr. Jason Wallach and Mr. Hamilton Morris, Kykeon Biotechnologies Inc. (Mindstate) and Tactogen Inc. (Tactogen), and Amy Rising (collectively referred to as the Interested Parties). On February 15, 2022, I issued the Order Modifying Order for Prehearing Statements which set filing deadlines for Prehearing Statements and scheduled a Prehearing Conference.

On March 16, 2022, the Interested Parties jointly filed their Opposed Preliminary Objection and Motion to Stay Rulemaking Pending HHS Evaluation (Preliminary Objection), requesting to stay the proceedings and the deadlines set forth in the Order Modifying Order for Prehearing Statements.<sup>1</sup> Specifically, the Interested Parties are seeking to stay the proceedings until the

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<sup>1</sup> The Interested Parties requested oral argument on their motion. The tribunal takes their request under advisement.

Department of Health and Human Services (HHS) provides updated scientific and medical evaluations and scheduling recommendations for the five tryptamines pursuant to 21 U.S.C. § 811(b). Prelim. Obj. at 8. The Interested Parties assert that these proceedings should not continue until HHS provides updated scientific and medical evaluations and scheduling recommendations because of the approximately ten-year delay between DEA receiving the HHS evaluations and recommendations and issuing the NPRM. *Id.* at 3-8. The Interested Parties represent that the Government opposes their motion to stay the proceedings but agreed to their proposed briefing schedule. *Id.* at 10.

Upon consideration of the Preliminary Objection and the proposed briefing schedule, it is hereby **ORDERED** that the Government file its opposition no later than **2:00 p.m. Eastern Time (ET) on March 30, 2022**, and the Interested Parties shall file their reply no later than **2:00 p.m. ET on April 6, 2022**.

The Interested Parties' request to stay all other pending deadlines in this matter is hereby **DENIED IN PART**. The deadlines set forth in the February 15, 2022 Order Modifying Order for Prehearing Statements are **VACATED** and the Prehearing Conference scheduled for **May 4, 2022** is **CANCELED**. It is further **ORDERED** that the Government file a Prehearing Statement no later than **2:00 p.m. ET on May 2, 2022**, and the Interested Parties shall file Prehearing Statements no later than **2:00 p.m. ET on June 1, 2022**. It is further **ORDERED** that a **Prehearing Conference in this matter will be conducted by video teleconference on June 15, 2022, at 1:00 p.m. ET**.

Dated: March 17, 2022

TERESA  
WALLBAUM  
TERESA A. WALLBAUM  
Administrative Law Judge

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## CERTIFICATE OF SERVICE

This is to certify that the undersigned, on March 17, 2022, caused a copy of the foregoing to be delivered to the following recipients:

- (1) John E. Beerbower, Esq., Counsel for the Government, via email at John.E.Beerbower@dea.gov and to the DEA Government Mailbox at dea.registration.litigation@dea.gov;
- (2) David Heldreth, CEO of Panacea Plant Sciences, via email at davidh@panaceaplantsciences.net;
- (3) John T. Hunter, Esq., Counsel for Dr. Jason Wallach and Mr. Hamilton Morris, via email at John@hljdefense.com;
- (4) Matt Baggott, Tactogen Inc., via email at matt@tactogen.com;
- (5) Dillian DiNardo, Kykeon Biotechnologies Inc., via email at dillan@mindstate.design;
- (6) Graham Pechenik, Esq., Counsel for Tactogen Inc. and Kykeon Biotechnologies Inc., via email at graham@calyxlaw.com;
- (7) Matthew C. Zorn, Esq., Counsel for Tactogen Inc. and Kykeon Biotechnologies Inc., via email at mzorn@yettercoleman.com; and
- (8) Amy Rising, via email at amynicolerising@gmail.com.

**ANIAYAH  
BECKFORD**

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Aniayah S. Beckford,  
Staff Assistant to Judge Wallbaum