

The effect of transferring DPX to Schedule II is that the drug will be subject to requirements that prescriptions be in writing and may not be refilled, 21 U.S.C. § 829(a), and that the drug will not be produced in excess of government-established quotas based on estimated medical and scientific need. 21 U.S.C. § 826(c). In contrast, Schedule IV allows prescriptions for DPX to be transmitted orally and refilled five times in any six month period. 21 U.S.C. § 829(b). Moreover, the penalty for violating provisions of the Act where a Schedule II drug is involved is substantially more severe than for a Schedule IV drug.¹⁰⁸

As has been the case with amphetamines and other widely abused drugs which DEA has been forced to transfer into Schedule II to curb their abuse, DPX abuse will not subside unless the more stringent Schedule II controls are imposed.

Because of the CSA's overriding emphasis on protecting the public from hazardous drugs, Congress, in the CSA Act, requires the Attorney General to determine the schedule in which to place a particular drug on the basis of three factors; its potential for abuse, its currently accepted medical use, and the degree to which it causes physical or psychological dependence.¹⁰⁹ To provide guidance to the Attorney General, the statute further states that the Attorney General's inquiry must include an evaluation of the following factors:

1. Its actual or relative potential for abuse.
2. Scientific evidence of its pharmacological effect, if known.
3. The state of current scientific knowledge regarding the drug or other substance.
4. Its history and current pattern of abuse.
5. The scope, duration and significance of abuse.
6. What, if any, risk there is to the public health.
7. Its psychic or physiological dependence liability.
8. Whether the substance is an immediate precursor of a substance already controlled under this subchapter.
[21 U.S.C. § 811(c).]