



The FED UP! Coalition

*A call for immediate, coordinated and comprehensive federal action
to end the epidemic of opioid addiction and overdose deaths*

April 27, 2021

Senator Richard Durbin, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Charles Grassley, Ranking Member
Senate Judiciary Committee
135 Hart Senate Office Building
Washington, D.C. 20510

Senator Patty Murray, Chairwoman
Senate HELP Committee
154 Russell Senate Office Building
Washington, D.C. 20510

Senator Richard Burr, Ranking Member
Senate HELP Committee
217 Russell Senate Office Building
Washington, D.C. 20510

Dear Senators Durbin, Grassley, Murray, and Burr:

The third and deadliest phase of the opioid epidemic began in 2013 when illicitly synthesized fentanyl and fentanyl analogues entered the United States in rapidly escalating quantities.

By 2016, Chinese fentanyl manufacturers began to make tweaks in the fentanyl molecule to create unscheduled analogs of fentanyl. Evidence of the rising death toll caused by unscheduled fentanyl-related substances (FRS) can be found in the toxicology reports of opioid overdose decedents.

Between 2016 and 2018, the United States was flooded with 20 new FRS that contributed substantially to the problem of rising opioid overdose deaths. In 2017, 39% of all opioid overdose deaths in Florida involved fentanyl analogues.



The FED UP! Coalition

*A call for immediate, coordinated and comprehensive federal action
to end the epidemic of opioid addiction and overdose deaths*

New FRS, once found, could be moved into Schedule I using the Analogue Act. This is not a rapid process. The Analogue Act requires proof that a new fentanyl-related substance must lack medical use and pose a high potential for abuse before it can be moved into Schedule I. During the 2016-2018 period, the ability of Chinese chemists to create new fentanyl analogues far outpaced our nation's ability to identify, analyze and categorize these drugs as Schedule I substances.

In February 2018, the Drug Enforcement Administration (DEA) used its temporary emergency scheduling powers to move all previously unscheduled FRS into Schedule I. In February 2020, Congress extended the class-wide scheduling of FRS to May 6, 2021. Following our lead in 2019, China introduced its own class-wide control of fentanyl-like substances effective May 1, 2019.

The United States and China are not the only countries to have adopted class-wide scheduling of FRS. England has had longstanding class-wide controls on FRS and Canada introduced its own class-wide scheduling in 2019.

The FED UP! Coalition to End the Opioid Epidemic continues to strongly support class-wide scheduling of FRS.

Unfortunately, Human Rights Watch (HRW) and other organizations published a letter opposing class-wide scheduling. These groups have unfairly politicized an issue that should be guided by science and evidence-based policymaking rather than politics. The main concerns expressed in their letter are (1) increased overcriminalization of users and low-level distributors of opioids, and (2) barriers to research on Schedule I drugs. The FED UP! Coalition agrees that, at the street level, many who sell drugs are themselves suffering from addiction, and we do not support incarceration for those whose illegal behavior was driven by their substance use disorder. Additionally, we support increased protection for street level defendants.

The HRW relies extensively on the United States Sentencing Commission (USSC) February 2021 Report, "Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns." However, the problem with that report is that the data presented by the USSC Report combines prosecutions for fentanyl analogs that have already been permanently placed in Schedule I with FRSs. For example, the report states, "Five fentanyl analogues, carfentanil, furanyl fentanyl, acetyl fentanyl, 4-fluoroisobutyryl fentanyl (or para-fluoroisobutyryl fentanyl), and cyclopropyl fentanyl accounted for 76.4 percent of the fentanyl analogues trafficked in fiscal year 2019." All five drugs were moved into Schedule I based on the Analogues Act. None of them are FRS are defined in the class-wide scheduling.

Evidence suggests that only 8 convictions for FRS were filed under the Emergency Scheduling order, and four of these were of cartel members. This appears to be a result of the fact that the class-wide scheduling in the United States and China removed the incentive for the development and



The FED UP! Coalition

*A call for immediate, coordinated and comprehensive federal action
to end the epidemic of opioid addiction and overdose deaths*

distribution of new FRS. FRS seizures at the border have decreased by 90%, and FRS deaths plummeted following the Emergency Order.

Thus, FRS prosecutions have not contributed to the problem of mass incarceration; far from it.

Concerns have been raised that placing all FRS in Schedule I will impede biomedical research. The DEA has already responded to these concerns by streamlining the process for scientists to conduct research on Schedule I FRS, and further changes to ensure access to Schedule I drugs for research can balance between public health and the need to do research. The argument that scheduling FRS would stop or significantly hamper much needed research into opioid reversal agents or medication assisted treatment (MAT) agents is insincere.

For us, the bottom line is that FRS scheduling will save lives by preventing production and trafficking of FRS poisons from their source of origin. FED UP! Board Member Dr. Tim Westlake, an emergency physician and medical regulator, originated this philosophy. Dr. Westlake was beyond weary at having to tell countless families that their children died from opioid overdoses. Dr. Westlake was looking for a way to prevent having that conversation with more families. Class-wide FRS scheduling has been successful without evidence of harmful unintended consequences.

The FED UP! Coalition is strongly in favor of the continuation of FRS scheduling and urge Congress to do all that it can to protect the public from this exceptionally dangerous class of drugs. Thank you very much for considering our very important and life-saving request.

Yours truly,

Emily Walden