



The FED UP! Coalition

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

August 6, 2021

Dear Members of Congress,

Thank you for your leadership in addressing the opioid epidemic, which continues to devastate families and communities across our nation. We respectfully request that you act now to make permanent the class-wide emergency Fentanyl Related Substance (FRS) scheduling language. Implemented in 2018 as an emergency order and temporarily extended twice since, it is set to expire in October hence the urgency. FRS language has proven to be an essential and effective harm reduction/overdose prevention tool as validated by a recent U.S. Government Accountability Office (GAO) report: SYNTHETIC OPIOIDS: Considerations for the Class-Wide Scheduling of Fentanyl-Related Substances, <https://www.gao.gov/assets/gao-21-499.pdf>. If lives are to continue to be saved, this tool must remain in place.

According to recent data released by the Centers for Disease Control and Prevention (CDC), opioid overdose deaths have risen from 50,000 in 2019 to almost 70,000 in 2020, with the majority of cases due to illicit fentanyls in the drug supply. Not surprisingly, the global pandemic has only served to exacerbate and accelerate an already horrific situation as individuals have wrestled with isolation, job loss and even the loss of family members who contracted COVID-19. As such, now is **not** the time to turn back the clock and eliminate a powerful and effective tool in the fight to save lives.

Legislation enacting FRS class-wide scheduling in the U.S. originated, in large part, because of the foresight and advocacy work of FED UP! Advocacy Committee Member Dr. Tim Westlake, a full time emergency physician in Wisconsin. Enacted in the Badger State in 2017 and implemented nationwide through a temporary emergency order by DEA in 2018, Congress has twice moved to temporarily extend the policy. Throughout, experts have studied the impact of closing a loophole in federal law that enabled drug cartels to create and then widely distribute these deadly poisons. By design, the scheduling language is aimed at harm reduction and overdose prevention:

- Unlike marijuana, hallucinogens, cocaine or even heroin, Fentanyl/FRSs are so toxic and deadly they can be classified -- and actually have been used -- as chemical weapons;
- A lethal dose of fentanyl is 2 mg, meaning one teaspoon can kill 2,000 people and 24 pounds is more than enough to kill 5.4 million residents in metropolitan Washington D.C.;
- In New York City alone in 2016-2017 there were 900 deaths from FRSs; during that same time, there were 2500 FRS-related deaths in Florida.



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In the almost four years since the emergency temporary scheduling order took effect, the intended results are incontrovertible. As the GAO report noted: The creation of new fentanyl-related substances and flow of fentanyl and FRSs from China have ground to a halt; most importantly, overdoses related to FRSs have effectively ceased altogether.

Any opposition to the policy raised to date about the potential negative impacts on research or increased incarcerations is theoretical and has not been borne out in fact or evidenced by the data:

- Regarding the primary concern raised by opposition that FRS scheduling was another failed attempt of the War on Drugs and would result in mass incarceration- according to the GAO, there have been only eight prosecutions in the entire U.S. using the FRS language since implementation of FRS class-wide scheduling in 2018 -- four of which had known ties to drug cartels. The reason there have not been more prosecutions is that the scheduling has worked exactly as designed, there are simply no new FRSs being created and distributed. FRSs have dried up. Halting the creation of new drugs and chemical substances means decreased supply and a reduction in harm, incarcerations and death. An individual cannot die from ingesting something never created, nor can they be incarcerated for trafficking something that doesn't exist. At the same time, we acknowledge that there has been an increase in the number of prosecutions for illicit fentanyl and already known and previously scheduled fentanyl analogues, but those prosecutions and incarcerations are a completely separate issue from FRSs and will not be addressed by removing the FRS scheduling that has already proven to save lives. When looking at criminal justice reform, it is critical not to blur the legal distinction between fentanyl analogues and FRSs.
- The opposition concerns voiced about dampening or restricting of research are also purely theoretical and are not born out by reality. Since the discovery of fentanyl in 1960, there has been over 60 years of extensive research done into molecules related to fentanyl, and in that time not one FRS based Narcan-like opioid antagonist or medication assisted treatment drug has ever been discovered or researched. Not one! The concerns raised in opposition do not impact the real world and seem to be focused on research not specific to FRS, but to schedule I drug research in general. In fact, there are only a handful of researchers – 28 in total, of which many serve as subcontractors for the Drug Enforcement Administration and Department of Defense – registered to study the FRS class and most provide analysis, detection and understanding of their harm. In short, research is not being impeded in any way.
- Anyone suggesting the Federal Analogue Act is sufficient by itself to stop the spread of deadly FRS has not sufficiently researched how it has been used or interpreted by the courts. Even if a substance has been proven to be an analogue in one case, it is not automatically scheduled for future cases. This is highly problematic as the typical threshold trigger for considering a substance to be an analogue is when it is found to be deadly and in multiple states. The



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Analogue Act is purely reactive, it reacts to the deaths of usually hundreds of our kids, vs the proactive and preventative nature of FRS scheduling.

- Finally, some have suggested the sentencing guidelines – five years in prison for 10 grams of fentanyl [enough to kill 5,000 people] and 10 years for 100 grams [enough to kill 50,000 people] -- are unnecessarily punitive. Again, this is a theoretical concern- a person cannot die from ingesting something never created, nor can they be incarcerated for trafficking something that doesn't exist. As such, stopping the creation and existence itself of these drugs is critical and the very essence of FRS scheduling language. Frankly, had this language not been in place the past few years, the death rate at the hands of FRS would have been far higher, as can be evidenced by what was seen in NYC and Florida in 2016-17.

Support for FRS scheduling is not a partisan issue. Twice -- in 2018 and again in 2019 -- Attorneys General (AG) in all 50 states, including President Biden's Health and Human Services Secretary, Javier Becera, who previously served as AG in California, petitioned Congress to pass FRS scheduling language. As well, many states (like New York) whose Legislatures and Governors herald from across the political spectrum have implemented FRS scheduling, recognizing the success of this tool in fighting opioid abuse. And, support is not limited to our country alone: in 2019, Canada enacted FRS class scheduling language as did China enact similar language as well, as a result of pressure from U.S. diplomats and trade negotiators who made the case using facts and data.

FRS scheduling language has -- and will continue -- to save lives by preventing production and trafficking of FRS poisons from their source of origin. As FED UP! Advocacy Committee Member Dr. Westlake has said on numerous occasions, one of the toughest and most heartbreaking parts of his job is having to tell a family their loved one has died from an opioid overdose. For this reason he sought a solution stop the scourge and which would not result in harmful or unintended consequences, and FRS scheduling threads that needle. As such, as members of The FED UP! Coalition, we ask Congress to do the right thing and protect the public from this exceptionally dangerous class of drugs. We must deploy every effective harm reduction and overdose prevention tool in our arsenal including FRS scheduling language. We need to pay attention to actual real world outcomes and not theoretical concerns that haven't borne out. Lives depend on it.

We welcome continued dialogue with you and your staff on making this critical reform permanent and offer ourselves and organizations as a resource. Thank you for your attention on this topic. Please contact Dr. Tim Westlake at tim.westlake@feduprally.org for questions or concerns.

Sincerely,



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