Department of Justice

STATEMENT OF THE
U.S. DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

BEFORE THE

HOUSE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON HEALTH
UNITED STATES HOUSE OF REPRESENTATIVES

FOR A HEARING ENTITLED

THE OVERDOSE CRISIS: INTERAGENCY PROPOSAL TO COMBAT ILLICIT FENTANYL-RELATED SUBSTANCES

SUBMITTED

December 2, 2021

Statement of
Drug Enforcement Administration
Before the House Energy and Commerce Committee
Subcommittee on Health
For a Hearing Entitled
"The Overdose Crisis: Interagency Proposal to Combat Illicit Fentanyl-Related Substances"

The U.S. Department of Justice's Drug Enforcement Administration (DEA) submits this statement for the record in support of the Administration's legislative proposal to permanently schedule fentanyl-related substances (FRS) as a class.

This is a critical moment in our country. Our nation is in the midst of a devastating overdose epidemic that claimed a record 100,000 lives this past year – exceeding last year's record. 265 people die every day from drug overdoses. Countless more people overdose and survive. This is a national epidemic. It knows no geographical bounds and it continues to get worse. This epidemic is driven primarily by illicit synthetic fentanyl. Today, drug cartels in Mexico are mass-producing fentanyl, largely sourced from chemical suppliers in China, and they are distributing these substances throughout the United States.

We are finding these deadly drugs in every state; in cities, suburbs, rural areas and local communities spanning the country. DEA's fentanyl seizures this year have reached record highs. We've already seized 13,000 pounds of fentanyl. The amount of illegal fentanyl in our country has risen to an unprecedented level. This year alone, DEA has seized enough fentanyl to provide every member of the United States population with a potentially lethal dose and we are still seizing more fentanyl each and every day. Synthetic fentanyl is driving the overdose epidemic in America.

According to the CDC, a majority of the overdose deaths we are talking about today involve synthetic opioids, like fentanyl. Even more alarming is that these synthetic drugs are being distributed in new forms. Fentanyl is being mixed with other drugs like cocaine, heroin, and methamphetamine. And drug traffickers and networks are flooding our communities with fentanyl in the form of fake, counterfeit prescription pills. These pills are made and marketed to purposefully deceive Americans into thinking that they are real prescription medications, but they are not. In reality, they are potentially deadly drugs. They are fentanyl and methamphetamine.

So far this year, DEA and our law enforcement partners have seized more than 15 million fake pills – an amount that has continued to rise dramatically year over year. Ten million of these fake pills were laced with fentanyl. And DEA laboratory testing of drugs seized by DEA has revealed that four in ten fentanyl-laced counterfeit pills contain a potentially deadly dose. Fentanyl-laced pills are extraordinarily dangerous and are responsible for many of the overdose deaths that we are reporting today. These types of pills are easily accessible today on social media and on e-commerce platforms, and they are widely available. Wherever there is a

smartphone or a computer, a dealer is one click away. It is clear that our work has never been more urgent.

The fentanyl crisis is a critical threat to the public health and safety of Americans. DEA's top priority is to protect our communities from the criminal drug networks that threaten our safety and our health. These are the same criminal drug networks that are driving our nation's devastating overdose rates.

DEA's resolve to combatting this overdose epidemic is unwavering. To this end, we must use every tool in the toolbox to combat this substantial threat. Now, more than ever, it is critical that Congress permanently schedule fentanyl-related substances (FRS) as a class to prevent criminal drug networks from evading detection and to enable DEA to seize these substances as they are found.

CLASSWIDE SCHEDULING IS CRITICAL TO RESPONDING TO THE OVERDOSE CRISIS

In February 2018, DEA used its authority under Section 201 of the Controlled Substances Act[1] (CSA) to place all nonscheduled fentanyl-related substances into Schedule I on an emergency basis for two years. DEA issued this emergency scheduling order to address rising overdose deaths connected to new and emerging substances related to fentanyl that were not already scheduled under the CSA.

Mexican drug cartels and criminal drug networks that manufacture synthetic fentanyl are able to continually synthesize new synthetic fentanyl compositions using different precursor and pre-precursor chemical compositions. Before emergency classwide scheduling of FRS, DEA was playing a game of "whack-a-mole" with drug traffickers who were able to make new fentanyl formulations more quickly than DEA can individually schedule those new formulations. With classwide scheduling, DEA is able to respond to fentanyl-related substances whenever they are encountered. Moreover, our law enforcement partners, including Customs and Border Protection, can seize the full array of fentanyl-related substances when they are encountered at ports of entry and elsewhere. It is critical that DEA be able to respond in real-time to this ever-changing threat by bringing all the tools we have to dismantling criminal networks and stopping the flood of fentanyl into the United States. The increase in overdose deaths is a reminder that criminal drug networks continue to push deadly fentanyl into the United States. Now is not the time to slow down this fight.

Expiration of the emergency classwide scheduling order for FRS would put DEA back in the "whack-a-mole" posture. Classwide scheduling of FRS ensures that our nation's laws keep pace with the evolving and dynamic synthetic drug market. DEA believes that the Administration's legislative proposal will improve the safety and health of our communities.

[1] 21 U.S.C. § 811(h)(1).

DEA IS COMMITTED TO EXPANDING ACCESS TO SCHEDULE I RESEARCH

Expanding access to Schedule I research is a critical part of DEA's mission to protect public safety and health. It is critical that the scientific and medical community study Schedule I substances, as some may turn out to have therapeutic value. DEA supports the Administration's legislative proposal's expansion of access to Schedule I research. DEA looks forward to continuing to work with the research community and our interagency partners to facilitate Schedule I research.

New Process for Obtaining a DEA Schedule I Research Registration. DEA supports the Administration's proposal that would amend the process for obtaining a DEA Schedule I research registration for certain researchers funded by HHS or the VA or conducting research under an FDA Investigational New Drug exemption.

Researchers in the Same Institution. Current law requires that every individual using a Schedule I substance in research have a DEA registration, with certain exceptions. DEA supports the Administration's proposal that would expand one exception, to allow researchers in the same institution conducting Schedule I research to operate under a single DEA registration.

Expanding Access for Related Research Sites. Under current law, separate DEA registrations are required for each location where a DEA registered researcher works with Schedule I substances. DEA supports the Administration's proposal that would allow a single DEA registration to cover the use of multiple locations for the performance of Schedule I research or the storage of Schedule I substances.

Requirement for New Inspections. DEA supports the Administration's proposal's affirmation that, under existing law, a new inspection of a research site is not required where an existing DEA-registered researcher applies to research another substance controlled under the same schedule or under a less restrictive schedule.

Registration Requirements for Continued Research. DEA supports the Administration's proposal's provision of a grace period for researchers to continue conducting research on substances that have been newly added to Schedule I.

Manufacturing Requirements for DEA Researchers. DEA supports the Administration's proposal's clarification that, under existing law, a DEA Schedule I researcher does not need to obtain a separate manufacturing registration to manufacture small quantities of a substance for research purposes under certain conditions.

Increasing Transparency Regarding Special Procedures. DEA occasionally applies special processes or criteria to applications to research certain controlled substances. DEA supports the Administration's proposal that would make public the special processes or criteria DEA has in place for certain controlled substances.

CONCLUSION

Classwide control of fentanyl-related substances has been a critical tool in DEA's fight against the fentanyl crisis. We strongly urge Congress to permanently schedule fentanyl-related substances as a class, and to accommodate enhanced research on Schedule I substances. DEA looks forward to working with Congress and our interagency partners on this proposal and on other solutions to address our nation's devastating overdose epidemic.