

Class-Wide Scheduling of Fentanyl-Related Substances (FRS)

December 3, 2024

Fentanyl is a synthetic opioid that has recognized [medical uses](#) in pain management; it is a Schedule II controlled substance under the federal [Controlled Substances Act](#) (CSA). *Fentanyl analogues*, [in generic use of the term](#), are similar in chemical structure to pharmaceutical fentanyl but are distinct substances; some of these analogues are permanently controlled under the CSA, and some are not. Fentanyl-related substances (FRS) are a [defined set of fentanyl analogues](#).

On February 6, 2018, the Drug Enforcement Administration (DEA) issued a [temporary scheduling order](#) (TSO) that placed FRS (as a class) in Schedule I under the CSA for two years. Congress has extended the TSO several times, and it is currently set to expire on December 31, 2024. This Insight outlines the history and policy implications of class-wide scheduling. For an overview of the relevant legal framework, see CRS Legal Sidebar, [An Expiration Date for Temporary Control of Fentanyl Analogues](#).

Scheduling Under the CSA and Issues with Synthetic Substances

The CSA established [five schedules](#) into which substances may be classified. Schedule I is the most restrictive, containing substances such as heroin with no accepted medical use and high potential for abuse.

Permanent Scheduling Procedures

The Attorney General (AG), through DEA, and in consultation with the U.S. Department of Health and Human Services, may place substances into schedules under the CSA based on eight factors: potential for abuse; known scientific evidence of pharmacological effects; current scientific knowledge of the substance; history and current pattern of abuse; scope, duration, and significance of abuse; risk to public health; dependence liability; and whether the substance is a precursor of an already-scheduled substance. Congress may also [schedule a substance through legislation](#).

Temporarily Scheduling Procedures

In 1984, Congress gave the AG authority to temporarily place a substance into Schedule I of the CSA to “[avoid imminent hazards to public safety](#).” To do so, the AG must consider the substance’s history and

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current pattern of abuse; scope, duration, and significance of abuse; and risk to public health. [Temporary scheduling](#) may be used to place substances into Schedule I only. It may last up to two years, with a one-year extension available in some circumstances, before it must be removed or permanently scheduled.

Analogue Enforcement Act

Some seek to circumvent the CSA and other drug laws by slightly modifying the molecular structures of synthetic controlled substances (i.e., creating an analogue) for illicit manufacturing and distribution. In response, Congress and President Reagan enacted the [Controlled Substances Analogue Enforcement Act of 1986](#), which amended the CSA [to treat a controlled substance analogue as a controlled substance under Schedule I](#). Under this provision, a *controlled substance analogue* is a substance that is substantially similar to the chemical structure of a Schedule I or II controlled substance *and* has a similar effect on the nervous system similar to the effect of a Schedule I or II controlled substance. It also must be intended for human consumption.

CSA Classification of Fentanyl Analogues and FRS

As the U.S. [opioid crisis](#) evolved and more fentanyl analogues were identified by law enforcement, DEA struggled to keep pace in scheduling each new substance. Further, the Department of Justice (DOJ) [reportedly has difficulty using the Analogue Enforcement Act](#) to prosecute cases, as it requires “expending a great deal of time and resources” and each new jury must evaluate technical information on the analogues, which yields inconsistent results. Due to these issues, [DEA issued the 2018 TSO](#), and controlled [FRS as a class](#) (based on their chemical structure) in Schedule I.

In 2020, due to the time limits of DEA’s temporary scheduling authority and wanting to keep FRS scheduled as a class, Congress extended the TSO through the [Temporary Reauthorization and Study of the Emergency Scheduling of Fentanyl Analogues Act](#). The TSO has been extended several times—most recently in Title VI of the [Consolidated Appropriations Act, 2023](#). It is currently set to expire on December 31, 2024.

Federal Enforcement of Fentanyl, Fentanyl Analogues, and FRS

Federal sentencing data from the U.S. Sentencing Commission (USSC) provide information on sentencing of convicted fentanyl and fentanyl analogue traffickers since the TSO was issued in 2018. However, USSC data do not generally indicate which analogue cases fall under the TSO versus analogues individually scheduled, nor do DEA and U.S. Attorneys report this in their arrest, seizure, and prosecution data. The [Government Accountability Office](#) (GAO) and [USSC](#) have retrieved additional case data on the TSO from the DEA and U.S. Attorneys, and provided these data in special reports.

As shown in **Table 1**, it does not appear that the TSO is applied often in fentanyl analogue cases (GAO and USSC found several FRS cases that had applied the TSO from FY2019 to FY2021), and most fentanyl trafficking cases involve fentanyl as opposed to fentanyl analogues. The number of individuals sentenced for fentanyl trafficking more than tripled from FY2019 to FY2023, while the number of individuals sentenced for fentanyl analogue trafficking more than doubled.

Table 1. Individuals Federally Sentenced for Trafficking of Fentanyl, Fentanyl Analogues, and Fentanyl-Related Substances
FY2019–FY2023

Fentanyl Category	FY2019	FY2020	FY2021	FY2022	FY2023
Fentanyl	895	1,023	1,533	2,366	3,085
Fentanyl Analogues	126	122	123	145	269
Fentanyl-Related Substances	2	1	NA	NA	NA

Source: USSC, *Fentanyl Trafficking* and *Fentanyl Analogue Trafficking*, May 2024; USSC, *Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns*, p. 23; and GAO, *Synthetic Opioids: Considerations for the Class-Wide Scheduling of Fentanyl-Related Substances*, p. 58.

Notes: As categorized by USSC, FRS are included in the fentanyl analogue numbers. Several FRS cases were pending sentencing in FY2021 but had not reached final disposition as of the release of the GAO report.

As Congress weighs whether to extend or adjust the TSO or allow it to expire, it might consider whether to require DEA, U.S. Attorneys, and USSC to distinguish between substances that fall under the TSO versus individually scheduled substances in arrest, seizure, prosecution, and sentencing data. This information could help inform policymakers' understanding of how often it is being used and its effect on fentanyl trafficking.

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