



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

September 2, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
S-230 The Capitol
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-212 The Capitol
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
H-232 The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
H-204 The Capitol
Washington, DC 20515

Dear Leader Schumer, Leader McConnell, Speaker Pelosi, and Leader McCarthy:

We appreciate your continued partnership as we seek to curb the overdose epidemic by advancing an addiction infrastructure to prevent substance use and treat people with substance use disorder, while also disrupting drug trafficking at home and abroad.

As you know, on February 6, 2018, the Department of Justice issued a rule temporarily placing the class of fentanyl-related substances (FRS) not otherwise scheduled into schedule I of the Controlled Substances Act (CSA). On May 4, 2021, President Biden signed into law the *Extending Temporary Emergency Scheduling of Fentanyl Analogues Act*, which extended the temporary scheduling until October 22, 2021.

The Office of National Drug Control Policy (ONDCP), the Department of Justice, and the Department of Health and Human Services have met regularly to develop a comprehensive approach that addresses the complex issues surrounding the scheduling of FRS. We are pleased to present to Congress a long-term, consensus approach that advances efforts to reduce the supply and availability of illicitly manufactured FRS, while protecting civil rights, and reducing barriers to scientific research for all schedule I substances.

This approach has five main components:

First, the approach would permanently place FRS into schedule I of the CSA. This provides law enforcement with the tools they need to respond to the trafficking and manufacture of illicitly manufactured synthetic opioids. Following the temporary class-wide scheduling of FRS in 2018, DEA National Forensic Laboratory Information System (NFLIS) data show that law enforcement encounters of fentanyl analogs that were not individually scheduled declined by almost 90%, when comparing total encounters from 2016 and 2017 to total encounters of uncontrolled fentanyl analogs from 2018 and 2019.

Second, the approach would create a streamlined process overseen by the Department of Health and Human Services to identify and remove or reschedule any individual FRS that is found to not have a high potential for abuse as defined in the CSA.

Third, the proposal would exclude those FRS that are scheduled by class from certain quantity-based mandatory minimum penalties normally associated with domestic trafficking, and import and export offenses of CSA schedule I compounds. It would further ensure that a federal court can vacate or reduce the sentence of an individual convicted of an offense involving an individual FRS that is subsequently removed or rescheduled from schedule I.

Fourth, the approach establishes a simplified process that would align research registration for all schedule I substances more closely with the research registration process for schedule II substances. The Biden-Harris Administration strongly supports expanding the research of FRS and other schedule I substances to help advance evidence-based public policy.

Fifth, the approach calls for the Government Accounting Office to analyze the implementation and impact of permanent class scheduling of FRS, including its impact on research, civil rights, and the illicit manufacturing and trafficking of FRS.

This approach is one element of our larger effort to address addiction and the overdose epidemic. In its first-year drug policy priorities, the Biden-Harris Administration outlined a strategy that includes expanding access to evidence-based prevention, treatment, harm reduction, and recovery support services, as well reducing the supply of illicit drugs.

To meet the challenge before us, the President's FY2022 Budget calls for \$41 billion for national drug program agencies, including \$10.7 billion in the Department of Health and Human Services to expand access to substance use prevention, treatment, harm reduction, and recovery support services. Notably, the Substance Abuse and Mental Health Services Administration's (SAMHSA) FY22 request includes \$3.5 billion for the Substance Abuse Prevention and Treatment Block Grant, which for the first time includes a 10 percent set aside for recovery services. These historic investments are essential as the country continues to respond to an overdose epidemic that has been exacerbated by the COVID-19 pandemic. We urge Congress to pass this necessary funding as soon as possible.

In addition, legislation is currently being considered by Congress that could help reduce overdose deaths. We look forward to working with Congress to advance policies that will expand access and remove barriers to evidence-based treatment, including medication for opioid use disorder and contingency management interventions. We also welcome legislative efforts to allow states to seek reimbursement for Medicaid-eligible individuals prior to reentry, thereby increasing access to treatment during incarceration and reducing the risk of overdose death upon reentry.

We also urge Congress to advance racial equity in our drug treatment and enforcement policies. For example, the Biden Administration strongly supports the "Eliminating a Quantifiably Unjust Application of the Law Act" or the "EQUAL Act," which would eliminate the current disparity in sentencing between crack cocaine and powder cocaine. This unjust disparity is not based on evidence and has caused significant harm for decades, particularly to individuals, families, and communities of color.

Expanding the nation's public health approach to substance use disorders and strengthening our public safety efforts to reduce the drug supply are essential parts of our strategy to bringing down the rates of overdose death. Acting to permanently schedule FRS, combined with historic investments in the addiction infrastructure, as well as efforts to tackle illicit finance and disrupt drug trafficking, will stand as the most comprehensive effort to address substance use and its consequences in our nation's history. In all these efforts, we look forward to working with Congress to support safe and healthy communities. Please do not hesitate to reach out if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Regina M. LaBelle". The signature is written in a cursive style with a small star symbol above the letter 'l' in "LaBelle".

Regina M. LaBelle

Acting Director of Office of National Drug Control Policy