



F20 Novel Psychoactive Substances, Fentanyl Analogues, and Scheduling: Federal and State Responses

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Learning Overview: After attending this presentation, attendees will understand the temporary scheduling provisions of the United States Code and explain how the temporary scheduling factors were utilized to affect the scheduling of all fentanyl-related substances. Attendees will also gain familiarity with the methodology for various state law scheduling constructs as they relate to federal scheduling. Finally, attendees will learn of the most recent judicial authority interpreting the temporary scheduling and emerging novel psychoactive substances.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by synthesizing statutory and judicial authority relating to novel psychoactive substances and fentanyl analogues, as well as highlighting the challenges in interpretation and application that are endemic to the legal analyses.

The supply, distribution, and potency of illicitly manufactured fentanyl analogues and other illicit opioids in the United States drug markets continues to evolve. According to the Centers for Disease Control and Prevention's Health Alert Network report (November 7, 2018), seized drug submissions testing positive for fentanyl or fentanyl analogues were numbered at 25,460 reports in the first six months of 2017. Many states saw fentanyl or fentanyl polydrug deaths outnumber heroin deaths in 2017. The sophisticated testing methodologies and equipment required to detect and identify novel fentanyl analogs, combined with the rapid evolution in the structure of fentanyl analogs and novel psychoactive substances, continue to challenge and hinder law enforcement and public health responses into present day 2018.

In February 2018, the Acting Administrator of the Drug Enforcement Administration ordered temporary placement of all fentanyl-related substances into Schedule I of the Controlled Substances Act based on a finding that placement of the synthetic opioids into Schedule I was necessary to avoid an imminent hazard to public safety.

This presentation will present the legal framework for temporary scheduling under 21 U.S.C. Section 841, with particularized discussion of the legal reasoning and justification for scheduling all fentanyl-related substances.¹ The number of fentanyl analogs, illicit opioids, and novel psychoactive substances identified since the fentanyl-related substances announcement will be presented to engender discussion of the impacts of the order scheduling fentanyl-related substances. This presentation will then feature classifications of state law statutory and regulatory amendments resulting from the Drug Enforcement Administration's (DEA's) scheduling of fentanyl-related substances.

Fentanyl-related scheduling has also impacted federal legal precepts in charging, litigating, and sentencing fentanyl analogs. An overview of the judicial, statutory, and regulatory changes in federal law will be provided, with case studies on recent decisions interpreting the relationship and differentiation between the terms fentanyl analog and analog of fentanyl in the evolving legal landscape. The United States Sentencing Guidelines amendments from 2018 affecting fentanyl analogs and other novel psychoactive substances will also be presented.

Reference(s):

¹. 21 U.S.C. § 841—U.S. Code—Unannotated Title 21. Food and Drugs § 841. Prohibited acts A.

Fentanyl, Analogue, Scheduling