



# Illicit Fentanyl and Weapons of Mass Destruction: International Controls and Policy Options

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As synthetic opioid overdose deaths in the United States reach [historic](#) levels, some policy stakeholders have sought U.S. action in [designating](#) fentanyl as a weapon of mass destruction (WMD). Such [calls](#) have also prompted congressional [interest](#). Although a statutory designation of fentanyl as a WMD does not appear necessary for additional executive branch action to address fentanyl as an illicit drug or chemical weapon, Congress may consider developing legislation to improve upon perceived shortcomings in the U.S. government’s approach to addressing fentanyl.

## Background

Various observers draw rhetorical comparisons between fentanyl abuse and WMDs. For example, the congressionally [mandated](#) Commission on Combating Synthetic Opioid Trafficking [assessed](#) in February 2022 that “[i]n terms of loss of life and damage to the economy, illicit synthetic opioids have the effect of a slow-motion weapon of mass destruction.”

Others, including some [Members of Congress](#), note the possible use of fentanyl as a weapon; in media [reports](#), [observers](#) have speculated that fentanyl’s increasing availability may prompt U.S. adversaries and non-state actors to weaponize the drug.

Governments have also recently committed to restricting the use of central nervous system-acting (CNS) chemicals, including fentanyl, in law enforcement and other security operations. (In 2002, the Russian military [reportedly](#) deployed an aerosolized form of fentanyl to incapacitate terrorists holding hostages in a Moscow theater; the gas also [killed](#) more than 120 of the hostages.)

## Narcotics Controls

Most U.S.-consumed illicit fentanyl is foreign-sourced—and combating such foreign production and U.S.-destined trafficking flows remains an ongoing congressional topic of oversight and legislation. Within the past three years, [Mexico](#) has emerged as the primary source and transit point for illicit fentanyl

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into the United States. Producers of illicit fentanyl mostly source precursor chemicals from Asian countries, especially China.

Fentanyl is subject to strict international controls that limit its legal use for medical and scientific purposes. Pursuant to the Single Convention on Narcotics Drugs of 1961, as amended (to which 154 countries are party, including the United States), more than two dozen additional fentanyl variants (analogues) are also subject to international controls. Several chemical inputs (precursors) used in the production of fentanyl are also subject to international controls under Table I of the 1988 Convention Against Illicit Traffic of Narcotics Drugs and Psychotropic Substances (191 states parties, including the United States). In the United States, fentanyl and its key precursors are also subject to domestic regulatory control.

On December 15, 2021, President Joe Biden issued [Executive Order 14059](#), which declared a national emergency with respect to international trafficking of illegal drugs, including “fentanyl and other synthetic opioids.” Invoking the International Emergency Economic Powers Act (IEEPA; 50 U.S.C. §§1701 et seq.), this order authorizes the Secretary of the Treasury to impose a variety of sanctions on foreign persons engaging in listed activities related to “the international proliferation of illicit drugs or their means of production.”

## Chemical Weapons Controls

The Chemical Weapons Convention (CWC), which has 193 states parties, including the United States, prohibits the development, production, transfer, stockpiling, and use of chemical and toxin weapons—and certain precursors. The CWC contains three schedules of chemicals “identified for the application of [CWC] verification measures,” but the aforementioned treaty prohibitions also apply to unscheduled chemicals. The convention includes several provisions requiring states parties to regulate the transfer of chemicals that could be used for chemical weapons purposes.

The CWC permits the use of chemicals otherwise prohibited under the treaty for “domestic riot control purpose.” However, a December 1, 2021, CWC states parties [statement](#) clarified that such permitted use does not include the “aerosolised use” of CNS chemicals, such as fentanyl. A 2018 OPCW Scientific Advisory Board [report](#) explained that aerosolized use of such chemicals in law enforcement has “resulted in permanent harm and death due to an irreversible action on life processes.”

U.S. law prohibits activities concerning chemical weapons, including trafficking in or producing weaponized fentanyl. For example, Section 229 of the Chemical Weapons Convention Implementation Act of 1998 (P.L. 105-277; 18 U.S.C. §229) forbids producing, transferring, and using chemical weapons.

## Selected Proposals

### Role of DHS’s CWMD Office

On February 22, 2019, the Department of Homeland Security’s (DHS’s) Assistant Secretary for Countering Weapons of Mass Destruction (CWMD) circulated a memorandum advocating the use of “appropriate CWMD authorities against fentanyl.” Made [public](#) by *Task and Purpose*, the memorandum explains that the CWMD Office, scheduled to terminate in December 2023, could apply its “assets and capabilities to the fentanyl problem through the lens of WMD.” The Homeland Security Act of 2002, as amended (P.L. 107-296; 6 U.S.C. §§101, et seq.), which established the CWMD Office, lacks a provision for classifying fentanyl as a WMD.

For FY2021, DHS proposed a program change to the Regional Medical Operations Group (RMOG), a part of the CWMD Office. The group's tasks would have included "filling information gaps into investigations and responses to fentanyl or ricin." DHS's FY2022 budget request did not contain such a proposal, the intended impact of which is unclear. According to DHS, RMOG is a regionalized network of CWMD federal personnel who possess "qualifications primarily in medicine and public health."

## DOD Designation

The DHS memo published by *Task and Purpose* in 2019 also stated that senior Defense Department (DOD) leaders "have proposed formally designating fentanyl as a WMD material." Definitions in current law (e.g., [50 U.S.C. §2302](#) and [18 U.S.C. §2332a](#)) broadly cover weapons that can cause mass casualties through the release of "toxic or poisonous weapons or their precursors" as well as biological and radioactive materials, but do not list specific substances of concern, including fentanyl.

## Executive Order

In July 2021, an advocacy organization sent an open [letter](#), which included high-level former officials as signatories, to President Biden, requesting that he identify fentanyl as a WMD by executive order. This organization has argued elsewhere that President Biden should issue such a designation pursuant to the authorities in IEEPA, which provides the President broad authority to regulate a variety of economic transactions following a declaration of national emergency. As noted, President Biden's December 2021 Executive Order declared a national emergency with respect to international trafficking of illicit narcotics, including fentanyl. Congress may consider whether to pursue the matter further through legislation and oversight.

## Author Information

Paul K. Kerr  
Specialist in Nonproliferation

Liana W. Rosen  
Specialist in International Crime and Narcotics

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