

# **Criminal Division Title III Risk Mitigation Protocols Investigations Involving Fentanyl and/or Drugs That May Be Mixed with Fentanyl**

**The Criminal Division has adopted the procedures and protocols set forth below as required to be reviewed and followed by the investigative team as a condition precedent to the approval of Title III requests in investigations involving fentanyl and/or drugs (including, but not limited to, heroin and cocaine) that are commonly mixed with fentanyl. Operational issues should be reviewed and discussed by members of the investigative team, including the Assistant United States Attorney and the law enforcement agency, to ensure that all agree to adhere to these protocols. While reviewing these procedures and protocols, the investigative team must contemplate how circumstances that could implicate the protocols may be encountered in the particular investigation and, if those circumstances arise, what steps will be taken to protect the public from exposure to Fentanyl or drugs that may be mixed with fentanyl. Any concerns with these procedures and protocols must be discussed with the Office of Enforcement Operations prior to submission of the Title III application to the Office of the Assistant Attorney General, so that any concerns may be considered by the authorizing Deputy Assistant Attorney General or Assistant Attorney General during that official's review. As used in these protocols, the term "fentanyl" includes fentanyl and fentanyl analogues, whether or not they are scheduled.**

**These protocols do not create or confer any legal rights or duties, and should not be relied upon by members of the public.**

1. Law enforcement agencies and U.S. Attorney's Offices (USAOs) conducting investigations involving drug trafficking must be on the lookout for any evidence that the drug trafficking organization (DTO) under investigation is illegally using or distributing fentanyl.
2. In connection with any Title III application submitted to the Office of Enforcement Operations (OEO), the investigative agency and USAO must bring to OEO's attention any known, credible evidence that a DTO or subject of their investigation is illegally using or distributing fentanyl.
3. The Criminal Chief or Narcotics Chief in the USAO should be briefed on the investigation, including the fact that fentanyl is being illegally used or distributed by the DTO, and should personally approve any Title III application involving fentanyl.
4. If agents have probable cause to believe that a subject intends to distribute fentanyl, they should consult with the USAO. Agents should make reasonable efforts to prevent the distribution. Depending on the nature and immediacy of the threat, and the specificity of the information obtained, those steps may include: (1) arresting the suspects; (2) conducting walled-off stops; (3) conducting additional physical surveillance; (4) obtaining court-authorized tracking devices; (5) disclosing information to state and local law enforcement

officers for appropriate action; or (6) increasing a visible presence of law enforcement at a particular time and location relevant to the distribution.

5. If agents have probable cause to believe that fentanyl is being stored at a particular location for later illegal distribution (i.e., a stash house), the USAO and agents should apply for a search warrant as soon as practicable and seize or otherwise prevent the distribution of the fentanyl and any other controlled substances.
6. If there is specific and credible evidence of fatal or near-fatal overdoses from fentanyl connected to the DTO or any subject of the investigation, agents should develop appropriate protocols tailored to the case. The United States Attorney should be fully briefed on the investigation and those protocols, and should personally approve of the operational plan.
7. The investigative agency and USAO will use their discretion in determining what methods to employ to prevent a potential illegal use or distribution of fentanyl from occurring, understanding that regardless of whether they run the risk of compromising the investigation, protecting public safety is paramount.

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