DETECT AND DEFEAT: THE BIDEN-HARRIS COUNTER-FENTANYL PROPOSAL

DETECT Fentanyl Suppliers

1. Tackle De Minimis Abuse
2. Serialize and Track Pill Presses
3. Empower Industry Partners to Identify and Report Suspicious Behavior
4. Reinstate Subpoena Authority to Investigate Suspicious Packages

DEFEAT Fentanyl Traffickers

5. Permanently Schedule Fentanyl-Related Substances Consistent with the Administration's 2021 Recommendations to Congress
6. Make Xylazine a Schedule III Drug
7. Stop Unlawful Imports
8. Increase Penalties on the Manufacturers, Distributors, and Importers of Deadly Drugs
9. Ensure that Illicit Drug Traffickers Can be Held to Account

DETECT Fentanyl Suppliers

Proposal 1: Tackle De Minimis Abuse

Background: Each day, over 2.8 million low-value "de minimis" shipments arrive at our airports, land borders, seaports, express carrier hubs, and other international facilities. These packages are subject to less rigorous reporting requirements than higher value shipments, creating an environment that drug traffickers exploit. This legislation would give U.S. Customs and Border Protection (CBP) the authority to demand additional documentation and other information about de minimis packages and would impose a corresponding penalty on violators. This would enable customs officials to more effectively analyze risk, identify patterns of concern, and take action against those traffickers seeking to abuse our system. The legislation also would add a user fee for de minimis packages that would help pay for the staff and equipment CBP needs to better identify – and seize – illicit fentanyl being shipped in small packages across our border.

Text (Information Reporting (19 U.S.C. § 1321)

SEC. xxx. ADMINISTRATIVE EXEMPTIONS.

Section 321 of the Tariff Act of 1930 (19 U.S.C. § 1321) is amended by adding at the end the following new subsections:

"(c) SUBMISSION OF DOCUMENTATION OR INFORMATION

(1) *Regulations.* Regulations. For any merchandise which may qualify for an administrative exemption pursuant to paragraph (a)(2), the Secretary is authorized to prescribe regulations to permit or require the submission, transmission or otherwise making available of such documentation or information to U.S. Customs and Border Protection, separate from any entry filing, that the Secretary determines is reasonably necessary for U.S. Customs and Border Protection to determine eligibility for the administrative exemption under paragraph (a)(2). Such documentation or information may be provided by a party other than one of the parties qualifying to make entry, as specified by the Secretary by regulations prescribed under section 1498 of this title, and may include, but is not limited to, documentation or information regarding the offer for sale or purchase, or the subsequent sale, purchase, transportation, importation or warehousing of such merchandise, including such documentation or information that may be related to the offering of such merchandise for sale or purchase within the United States through a commercial or marketing platform, including an electronic commerce platform or marketplace. Where such documentation or information is submitted, transmitted or otherwise made available to U.S. Customs and Border Protection pursuant to regulations prescribed under this paragraph, such documentation or information must be true and correct to the best of the party's knowledge and belief, subject to any penalties authorized by law. Where the documentation or information is not reasonably verifiable by the party submitting, transmitting or otherwise making available such documentation or information, the regulations prescribed shall permit the submission, transmission or otherwise making available of such documentation or information to U.S.

Customs and Border Protection on the basis of what the party reasonably believes to be true and correct. Such documentation or information may be used by U.S. Customs and Border Protection for any lawful purpose.

(2) *Civil Penalty.* Any person who violates the regulations promulgated pursuant to paragraph (c)(1) of this section may be liable for a civil penalty of $1,000 for the first violation, and $2,000 for each subsequent violation. A penalty imposed under this subsection may be in addition to any other penalty authorized by law. Any penalty assessed pursuant to this subsection may be remitted or mitigated, as appropriate, in accordance with section 618 of this Act.

(3) With respect to articles that are sent to the United States through the international postal network, the Secretary, in consultation with the Postmaster General, shall determine whether it is appropriate to impose the same or similar requirements on shipments by the United States Postal Service. If the Secretary determines that such requirements are appropriate, then they shall be set forth in the regulations.

(d) PROVISION OF HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES CLASSIFICATION AND OTHER NECESSARY DOCUMENTATION OR INFORMATION

(1) Notwithstanding any other provision of law, except as provided in subdivisions (2) and (3) of this subsection, the exemption provided for in subsection (a)(2)(C) shall not be allowed unless the following information is provided to U.S. Customs and Border Protection, pursuant to an authorized electronic data interchange system, as part of the entry filing in accordance with section 1498 of this title, for each article claimed to be eligible for such exemption:

(i) the 10-digit classification for each such article under the Harmonized Tariff Schedule of the United States;

(ii) a description of the article with sufficient specificity to allow U.S. Customs and Border Protection to evaluate the correctness of the 10-digit classification for each such article under the Harmonized Tariff Schedule of the United States;

(iii) the name and address of the owner or purchaser of the article at the time of its importation into the United States; and

(iv) the fair retail value of the article in the country of shipment, in U.S. currency.

(2) The Secretary may by regulation prescribe for the provision to U.S. Customs and Border Protection of alternative information, in lieu of the information specified in subdivision (1) of this subsection, if the Secretary determines that such alternative information is sufficient to enable the efficient administration and enforcement of the exemption provided for in subsection (a)(2)(C).

(3) With respect to articles that are sent to the United States through the international postal network, the Secretary, in consultation with the Postmaster General, shall determine whether it is appropriate to impose the same or similar requirements on shipments by the United States Postal Service. If the Secretary determines that such requirements are appropriate, then they shall be set forth in the regulations.

Effective Date

The amendments made by this section shall take effect 180 days after the date of the enactment of this Act."

Text (Streamlining Forfeiture & Abandonment – Abandonment of De Minimis Shipments (19 U.S.C. § 1499)

SEC. xxx. SPECIAL RULES FOR THE DISPOSITION OF DETAINED *DE MINIMIS* IMPORTATIONS

Subsection (a) of section 499 of the Tariff Act of 1930, 19 U.S.C. § 1499(a) is amended –

(1) In paragraphs (1)-(3), by striking "the Customs Service" or "The Customs Service" and inserting "U.S. Customs and Border Protection and special agents within Homeland Security Investigations" in each place where "the Customs Service" or "The Customs Service" appears;

(2) In paragraphs (4)-(5), by striking "the Customs Service" or "The Customs Service" and inserting "U.S. Customs and Border Protection" in each place where "the Customs Service" or "The Customs Service" appears;

Subsection (b) of section 499 of the Tariff Act of 1930, 19 U.S.C. § 1499(b) is amended by striking "the Customs Service" or "Customs Service" and inserting "U.S. Customs and Border Protection" in each place where "the Customs Service" or "Customs Service" appears.

Subsection (c) of section 499 of the Tariff Act of 1930, 19 U.S.C. § 1499(c) is further amended —

(1) in paragraph (1), by striking "the Customs Service" in the first sentence, and inserting "U.S. Customs and Border Protection and special agents within Homeland Security Investigations";

(2) in paragraph (2),

(A) by striking "The Customs Service" in the first sentence, and inserting "U.S. Customs and Border Protection";

(B) by striking "The Customs Service" in subparagraph (E), and inserting "U.S. Customs and Border Protection";

(C) by adding at the end the following:

"For shipments entered subject to an administrative exemption under paragraph (a)(2)(C) of section 1321 of this title, U.S. Customs and Border Protection shall provide such notice to each party who appears to have an interest in the detained merchandise, based on information reasonably available to U.S. Customs and Border Protection, in such form and manner as the Secretary shall by regulation prescribe. In addition to the requirements of subparagraphs (A) through (E) of this paragraph, such notice of the detention of a shipment entered subject to an administrative exemption under paragraph (a)(2)(C) of section 1321 of this title shall also advise the interested party that, in lieu of providing information in response to subparagraph (E), the interested party may voluntarily abandon the merchandise. If U.S. Customs and Border Protection does not receive a response from an interested party within 15 days of the date of the notice, then the merchandise will be deemed abandoned and title of such merchandise will be vested in the United States and disposed of in accordance with law."

(2) In paragraph (3), by striking "the Customs Service" and inserting "U.S. Customs and Border Protection" in each place where "the Customs Service" appears;

(3) In paragraph (5),

(A) by striking "the Customs Service" and inserting "U.S. Customs and Border Protection" in each place where "the Customs Service" appears in subparagraph (A) and (C); and

(B) by adding at the end the following new subparagraph:

"(D) Subparagraphs (A) through (C) of this paragraph do not apply to shipments entered subject to an administrative exemption under paragraph (a)(2)(C) of section 1321 of this title.

Text (Streamlining Forfeiture & Abandonment – Summary Forfeiture of Counterfeit Merchandise (19 U.S.C. § 1526)

SEC. xxx. IMPOSING RESPONSIBILITY TO COMBAT COUNTERFEITS.

Section 526 of the Tariff Act of 1930 (19 U.S.C. § 1526) is amended—

(1) in section heading by inserting "Or Protected Copyrighted Work" after "Merchandise Bearing American Trade-Mark"

(2) in subsection (e)

(A) by inserting "or Infringing a Copyright" after "Merchandise Bearing Counterfeit Mark" and before "; Seizure and Forfeiture;";

(B) by inserting "Or Otherwise Interdicted" after "Disposition of Seized" and before "goods";

(C) by striking "such" after "any" and before "merchandise bearing a counterfeit mark"

(D) by inserting "or infringing a copyright (within the meaning of section 501 of title 17)" after "(within the meaning of section 1127 of title 15)";

(E) by inserting "or section 602 of title 17" after "section 1124 of title 15" and before ", shall be seized";

(F) by inserting "or otherwise interdicted pursuant to such regulations as the Secretary shall prescribe," after ", shall be seized" and before ", and in the absence of";

(G) by striking "trademark owner" and inserting "owner of the mark or copyright being infringed," before "forfeited for violations of the customs laws.";

(H) by inserting "Where such merchandise is imported or attempted to be imported with a claimed administrative exemption under section 1321(a)(2)(C) of this Title, the merchandise may be forfeited and title shall vest immediately in the United States.

(I) by striking "trademark" after "notifying the owner of the" and insert "mark or copyright being infringed";

(J) by inserting "In all cases where merchandise is forfeited pursuant to this paragraph, U.S. Customs and Border Protection shall advise the carrier of such forfeiture in a form and manner as the Secretary shall prescribe in regulation, which may include communication through an authorized electronic data interchange system." after "destroy the merchandise." and before "Alternatively, if the merchandise is not unsafe"; and

(K) by striking "trademark" after "consent of the" and inserting "of the mark or copyright being infringed" after "owner" and before ", the Secretary may obliterate the trademark";

(3) in subsection (f)

(A) in paragraph 1

(i) by inserting "or" after "who directs,";

(ii) by inserting a comma after "assists" and before "financially or otherwise"; and
(iii) by striking "the importation of merchandise for sale or public distribution that is seized under subsection (e)" and inserting "any importation of merchandise in violation of subsection (e)".

(B) in paragraph 2 by inserting "or for the first interdiction where notice has been provided pursuant to such regulations as the Secretary shall prescribe" after "For the first such seizure";

(C) in paragraph 3 by inserting "or for the second interdiction and thereafter where notice has been provided pursuant to such regulations as the Secretary shall prescribe" after "For the second seizure and thereafter,"; and

(D) in paragraph 4 by striking "the Customs Service" and inserting "U.S. Customs and Border Protection".

Text (Streamlining Forfeiture & Abandonment – Forfeiture of Controlled Substances Imported Contrary to Law (19 U.S.C. § 1595a))

SEC. xxx. PENALTIES FOR EXPORTS CONTRARY TO LAW

Section 596 of the Tariff Act of 1930 (19 U.S.C. § 1595a) is amended by

(1) by inserting "And Exportation" after "Aiding Unlawful Importation" in the section heading

(2) in subsection (d) by striking "shall" and inserting "may"

(3) by inserting new subsections (e), (f), (g) and (h) after subsection (d):

"(e) Penalty for Exports Contrary to Law.

Notwithstanding whether the article or articles are seized, every person who directs, assists financially or otherwise, or is in any way concerned in the exportation or sending from the United States or the attempted exportation or sending from the United States of merchandise contrary to law shall be liable to a penalty not to exceed the export value of the article or articles exported or sent or attempted to be exported or sent from the United States."

(4) inserting new subsection (f)

"(f)

"(1) Where merchandise is imported or attempted to be imported to the United States with a claimed administrative exemption under section 1321(a)(2)(C) of this Title, it may be forfeited to the United States and title shall vest immediately in the United States if it is merchandise subject to one or more of the following provisions."

"(i) Schedule III, IV, and V controlled substances, as defined in 21 U.S.C. 802(6) and 812, imported contrary to law and seized under subsection (c)(1)(B) of this section;

(ii) Any product that is subject to any restriction or prohibition on its importation under the Federal Food, Drug, and Cosmetic Act (including section 801 of that Act (21 U.S.C. 381)) or the Public Health Service Act (including section 361 of that Act (42 U.S.C. 264)) and seized under subsection (c)(2)(A) of this section; and

(iii) Merchandise bearing a counterfeit mark, infringing a copyright, or merchandise capable of circumventing technological measures for protection of copyright seized under subsection (c)(2)(C) of this section.

(iv) Any product, equipment, or container subject to forfeiture under 21 U.S.C. 881(a)(2), (3) or (9), imported contrary to law, and seized under subsection (c)(1)(B), (c)(2)(A), or (c)(2)(B) of this section."

"(2) In all cases where merchandise is forfeited pursuant to this paragraph, U.S. Customs and Border Protection shall advise the carrier of such forfeiture in a form and manner as the Secretary shall prescribe in regulation which may include notice by way of an authorized electronic data interchange system."

"(g) For any violation that is subject to seizure and forfeiture under this section, the Secretary retains discretion to assess a penalty as provided by law, including a penalty pursuant to subsection (b) or (e), as appropriate, in lieu of seizure and forfeiture.".

"(h) Nothing in this provision shall be construed as limiting the application of penalties under any other statute."

Text (Streamlining Forfeiture & Abandonment – Conforming Amendment for Forfeiture Provisions (19 U.S.C. § 1607)

SEC. xxx. Seizure; value $500,000 or less, prohibited merchandise, transporting conveyances.

Section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended—

(1) in the section heading by inserting ", Merchandise Forfeited" after "Seizure; value $500,000 or less, prohibited merchandise, transporting conveyances" in the section heading;

(2) by inserting in section (a) "except that merchandise seized under 19 U.S.C. 1526(e) and 19 U.S.C. 1595a(f) shall be forfeited and title shall vest immediately in the United States pursuant to such regulations as the Secretary shall prescribe and the provisions of subsection (a) and 19 U.S.C. § 1610 shall not apply" after "each party who appears to have an interest in the seized article".

Text (De Minimis User Fees (19 U.S.C. § 58c)

SEC. xxx. CUSTOMS USER FEE FOR PROCESSING CERTAIN SHIPMENTS

(a) In General.—Section 13031(a)(10) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(10)) is amended—

(1) in subparagraph (C)—

(A) in clause (ii) by striking "or"

(B) in clause (iii) by striking "." and adding "; or" and

(C) by adding the following as a new clause (iv):

"(I) $2 per shipment, if the entry or release of that shipment, whether automated or manual, is made under section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)), provided, however, that with respect to shipments that are sent to the United States through the international postal

network, the Secretary, in consultation with the Postmaster General, shall determine whether it is appropriate to impose the same or similar requirements on shipments by the United States Postal Service. If the Secretary determines that such requirements are appropriate, then they shall be set forth in the regulations."

"(II) In addition to any adjustment made pursuant to subsection (l), beginning in fiscal year 2025, the Secretary shall adjust the amount described in subclause (I) to an amount commensurate with the costs of services provided in connection with customs processing of shipments entered under section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)) on a biennial basis."

(b) Limitation—Section 13031(b)(8) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(8)) is amended by adding the following as a new subparagraph (C):

(C) The fee charged under subsection (a)(10)(C)(iv), as adjusted by other provisions of this section, may not exceed the fee charged under (a)(10)(C)(i), as adjusted by other provisions of this section.

(c) Payment—Section 13031(b)(8)(D)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(8)(D)(i)) is amended by adding the following after "merchandise": ", except in the case of fees charged under (a)(10)(C)(iv), where such fees shall be paid by the party making entry".

(d) Availability of Fees for Customs Processing of Certain Entries.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (2)—

(A) in the first sentence, by adding after "Account" "except fees collected and adjusted under (a)(10)(c)(iv) and (l)"; and

(B) by adding a new third sentence after "provisions." and before "So" as follows—"Funds deposited into the Customs User Fee account from collections and adjustments made under (a)(10)(c)(iv) and (l) shall be available, without further appropriation or fiscal year limitation and in addition to any other funds available for such purpose, to pay the costs associated with processing shipments made under section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C))."

SEC. xxx. DISPOSITION OF CERTAIN CUSTOMS FEE INFLATION INCREASES.

Section 32201(b) of Pub. L. 114–94, div. C, title XXXII (Dec. 4, 2015) (19 U.S.C. § 58c note), is amended by deleting the final period and adding the following:

"; provided, however, that fees collected under 19 U.S.C. § 58c(a)(10)(c)(iv) and any adjustments thereto shall be available as provided under 19 U.S.C. § 58c(f)(2)."

Proposal 2: Serialize and Track Pill Presses

Background: Law enforcement seized more than 76 million fake fentanyl pills—marketed as another substance but containing fentanyl—in 2023. This proposal targets the production of these fake pills by requiring those who manufacture or distribute pill tableting or encapsulating machines and their critical parts to "serialize" their machinery, keep records of all relevant transactions, and report those transactions to the Attorney General by creating a national registry to track the movement of these pill tableting or encapsulating machines and their critical parts in the stream of commerce. Those who violate the serialization, record keeping, reporting, or registry requirements will be subject to penalties.

Text (Serialize and Track Pill Presses):

SEC. xxx. SERIALIZATION AND REGISTRATION OF PILL PRESSES

SECTION 1. DEFINITIONS.

Section 102 of the Controlled Substances Act (21 U.S.C. § 802) is amended as follows:

(1) REGULATED PERSON.—The definition of "regulated person" in paragraph (38) is amended by replacing the phrase "or an encapsulating machine" with the following: "an encapsulating machine, a critical part of a tableting machine, or a critical part of an encapsulating machine".

(2) REGULATED TRANSACTION.—The definition of "regulated transaction" in paragraph (39) is amended by replacing the phrase "distribution, importation, or exportation of" in subparagraph (39)(B) with the phrase "distribution, receipt, sale, importation, or exportation of, or an international transaction involving shipment of" and by replacing the phrase "or encapsulating machine" in subparagraph (39)(B) with the following: "encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine".

(3) INTERNATIONAL TRANSACTION.—The definition of "international transaction" in paragraph (42) is amended by replacing the phrase "listed chemical" with the following: "a listed chemical, a tableting machine, an encapsulating machine, a critical part of a tableting machine, or a critical part of an encapsulating machine".

(4) BROKER AND TRADER.—The definition of "broker and trader" in paragraph (43) is amended by replacing the phrase "listed chemical" with the following: "a listed chemical, a tableting machine, an encapsulating machine, a critical part of a tableting machine, or a critical part of an encapsulating machine".

(5) SERIOUS DRUG FELONY.—Paragraph (57), defining "serious drug felony", is redesignated as paragraph (58).

(6) SERIOUS VIOLENT FELONY.—Paragraph (58), defining "serious violent felony", is redesignated as paragraph (59).

(7) CRITICAL PARTS.—The following is added at the end:

"(60) The term "critical part", when used in reference to a tableting machine or encapsulating machine, means any of the following integral parts when designed primarily for use in a tableting or encapsulating machine:

"(A) press punch;
"(B) die system;
"(C) press turret;
"(D) hopper;
"(E) compression roller;
"(F) discharge chute;
"(G) vacuum system;
"(H) capsule feeding unit;
"(I) automatic feeding unit; or
"(J) any other item identified in a regulation published by the Attorney General used in the operating of tableting or encapsulating machines."

SECTION 2. REGULATED TRANSACTIONS OF CRITICAL PARTS.

(a) RECORD OF REGULATED TRANSACTIONS.— Section 310 of the Controlled Substances Act (21 U.S.C. § 830) is amended—

(1) In paragraph (a)(1), by replacing the phrase "or an encapsulating machine" with "an encapsulating machine, a critical part of a tableting machine, or a critical part of an encapsulating machine" and by inserting ", in such form and manner as the Attorney General shall prescribe by regulation," after "record of the transaction".
(2) In paragraph (a)(2), by replacing the phrase "or encapsulating machine" with "encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine".

(b) REPORTS TO ATTORNEY GENERAL.— Section 310 of the Controlled Substances Act (21 U.S.C. § 830) is amended—

(1) In subsection (b)(1)(A), by replacing the phrase "payment or delivery" with "payment or delivery of a listed chemical, tableting machine, encapsulating machine, a critical part of a tableting machine, or a critical part of an encapsulating machine."
(2) In subsection (b)(1)(A), by replacing the phrase "any other circumstance that the regulated person believes may indicate that the listed chemical" with "any other circumstance that the regulated person believes may indicate that the listed chemical, tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine".
(3) In subsection (b)(1)(D), by replacing the phrase "or encapsulating machine" with "encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine".

(c) EFFECTIVE DATE.—The recordkeeping obligations with respect to critical parts of tableting machines and critical parts of encapsulating machines in Section 2(a); the reporting obligations with respect to encapsulating machines, tableting machines, critical parts of tableting machines, and critical parts of encapsulating machines in Section 2(b)(1) and (2); and the

reporting obligations with respect to critical parts of tableting machines and critical parts of encapsulating machines in Section 2(b)(3) shall become effective 120 days after the date of enactment, except that the Attorney General may by order published in the Federal Register postpone the effective date of this section for such period as he may determine to be necessary for the efficient administration of this title.

SECTION 3. SERIALIZATION OF CERTAIN MACHINES AND PARTS.

The Controlled Substances Act is amended by inserting the following after Section 310 (21 U.S.C. § 830):

"Section 310A [21 U.S.C. § 830a] – Serialization of Certain Machines and Parts

(a) SERIAL NUMBER

Each manufacturer, distributor, importer, or exporter of a tableting machine, encapsulating machine, a critical part of a tableting machine, or a critical part of an encapsulating machine shall, when and as required by regulation of the Attorney General, identify the tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine by a serial number which shall be engraved, cast, or otherwise permanently affixed to a non-removable part of the tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine in accordance with such regulations.

(b) REPORTING

Any regulated person who manufactures, distributes, receives, sells, imports, or exports a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine that is subject to the serialization requirement set forth in subsection (a), shall report the transaction to the Attorney General and maintain records of such transaction as required in Section 310 [21 U.S.C. 830], in such form and manner as the Attorney General shall prescribe by regulation.

SECTION 4. REGISTRATION OF CERTAIN MACHINES AND PARTS.

The Controlled Substances Act is amended by inserting the following after Section 310 (21 U.S.C. § 830):

Section 310B [21 U.S.C. § 830b] – Registration of Certain Machines and Parts

(a) DEFINITIONS

For the purposes of this section:

(1) The term "manufacture" means the production or assembly of a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine.

(2) The term "distribute" means to deliver a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine.

(3) The term "deliver" means the actual, constructive, or attempted transfer of a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine, whether or not there exists an agency relationship.

(4) The term "destroy" means to cause such serious damage to a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine so that it can no longer be used for its intended purpose.

(b) REGISTRATION OF CERTAIN MACHINES AND PARTS

Each manufacturer, distributor, importer, or exporter of a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine shall, when and as required by regulation of the Attorney General, register the tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine with the Attorney General in accordance with such regulation.

(c) REPORTING

Any regulated person who manufactures, distributes, receives, sells, imports, exports, or destroys a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine that is required to be registered pursuant to subparagraph (b), shall report that act to the Attorney General and maintain records of such act as required in Section 310 [21 U.S.C. § 830], in such form and manner as the Attorney General shall prescribe by regulation.

(d) REGULATIONS

The Attorney General is authorized to promulgate rules and regulations relating to tableting machines and encapsulating machines. The Attorney General shall by regulation establish which tableting machines, encapsulating machines, critical parts of tableting machines, and critical parts of encapsulating machines are subject to the registration and reporting requirements of (b) and (c) and the information to be provided pursuant to subsections (b) and (c), which shall include, but is not limited to, the location of the tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine.

(e) NATIONAL PILL PRESS REGISTRY

The Attorney General shall maintain a central registry of all tableting machines, encapsulating machines, critical parts of a tableting machine, or critical parts of an encapsulating machine that are subject to the registration requirement set forth in subparagraph (b). This registry shall be known as the National Pill Press Registry.

SECTION 5. REGISTRATION OF MANUFACTURERS, IMPORTERS, EXPORTERS, AND DEALERS OF TABLETING MACHINES, ENCAPSULATING MACHINES, AND CRITICAL PARTS

The Controlled Substances Act is amended by inserting the following after Section 310B (21 U.S.C. § 830):

Section 310C [21 U.S.C. § 830c] – Registration of Manufacturers, Importers, Exporters, and Dealers of Tableting Machines, Encapsulating Machines, and Critical Parts

(a) DEFINITIONS

For the purposes of this section:

(1) The term "manufacture" means the production or assembly of a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine.

(2) The term "distribute" means to deliver a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine.

(3) The term "deliver" means the actual, constructive, or attempted transfer of a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine, whether or not there exists an agency relationship.

(4) The term "destroy" means to cause such serious damage to a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine so that it can no longer be used for its intended purpose.

(5) The term "deal" means to engage in the business of selling or distributing tableting machines, encapsulating machines, critical parts of tableting machines, or critical parts of encapsulating machines at wholesale or retail.

(6) The term "engaged in the business" means devoting time, attention, and labor to dealing tableting machines, encapsulating machines, critical parts of tableting machines, or critical parts of an encapsulating machine as a regular trade or business to predominantly earn a profit through the repetitive purchase and resale.

(b) REGISTRATION

(1) Every person who manufactures, imports, exports, or deals, or proposes to engage in the manufacture, importation, exportation, or dealing of any tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine, shall obtain annually a registration issued by the Attorney General.

(2) The Attorney General may, by regulation, waive the requirement for registration of certain manufacturers, importers, exporters, and distributors of

any tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine if the Attorney General finds it consistent with public health and safety.

(3) A separate registration shall be required for each principal place of business where the applicant manufactures, imports, exports, or deals a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine.

(4) A registration to manufacture, import, export, or deal a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine terminates if and when such registrant (i) ceases legal existence; (ii) ceases to engage in the manufacture, importation, exportation, or dealing; or (iii) surrenders such registration.

(5) In the case of such a registrant who ceases legal existence or ceases to engage in the manufacture, importation, exportation, or dealing, such registrant, or his agent or successor in interest, shall promptly notify the Attorney General in writing of such fact.

(6) A registration to manufacture, import, export, or deal a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine may only be assigned to another entity with the written consent of and upon such conditions as the Attorney General may specify.

(c) REGISTRATION CONSIDERATIONS

The Attorney General shall register an applicant to manufacture, import, export, or deal a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine, unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.

In determining the public interest for the purposes of this subsection, the Attorney General shall consider—

(1) development and maintenance of effective controls against diversion of tableting machines, encapsulating machines, and critical parts thereof into other than legitimate channels;

(2) compliance with applicable Federal, State, and local law;

(3) prior conviction record of the applicant;

(4) past experience in the manufacture, import, export, and dealing of tableting machines, encapsulating machines, or critical parts thereof; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

(d) AUTHORIZED ACTIVITIES

No person may manufacture, import, export, or deal any tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine unless such person has an active registration to do so issued by the Attorney General, unless

(1) such person is an agent or employee of any registrant acting in the usual course of his business or employment; or

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of the tableting machine, encapsulating machine, or critical part thereof is in the lawful and usual course of his business or employment.

(e) INSPECTION

The Attorney General is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by the Attorney General.

(f) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION

(1) A registration pursuant to section 830c(b) of this title to manufacture, import, export, or deal a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine may be suspended or revoked by the Attorney General upon a finding that the registrant—

(i) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II;

(ii) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(iii) has been convicted in any court of an offense involving a tableting machine, encapsulating machine, a critical part of a tableting machine, or a critical part of an encapsulating machine; or

(iv) has committed such acts as would render his registration inconsistent with the public interest.

(2)

(i) Before suspending or revoking a registration to manufacture, import, export, or deal tableting machines, encapsulating machines, critical parts of tableting machines, or critical parts of encapsulating machines, or pursuant to a denial of registration, the Attorney General shall serve upon the applicant or

registrant an order to show cause why registration should not be denied, revoked, or suspended.

(ii) An order to show cause shall contain a statement of the basis for the denial, revocation, or suspension, including specific citations to any laws or regulations alleged to be violated by the applicant or registrant, direct the applicant or registrant to appear before the Attorney General at a time and place stated in the order, and notify the applicant or registrant of the opportunity to submit a corrective action plan on or before the date of appearance.

(iii) Upon review of any corrective action plan submitted by an applicant or registrant pursuant to subparagraph (2)(ii), the Attorney General shall determine whether denial, revocation, or suspension proceedings should be discontinued, or deferred for the purposes of modification, amendment, or clarification to such plan.

(iv) Proceedings to deny, revoke, or suspend shall be conducted in accordance with subchapter II of chapter 5 of title 5. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this subchapter or any other law of the United States.

(v) The requirements of this subsection shall not apply to the issuance of an immediate suspension order under subsection (f)(3).

(3) SUSPENSION OF REGISTRATION IN CASES OF IMMINENT DANGER

(i) The Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety. A suspension under this subsection shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the Attorney General or dissolved by a court of competent jurisdiction.

(ii) In this subsection, the phrase "imminent danger to the public health or safety" means that, due to the failure of the registrant to maintain effective controls against diversion or otherwise comply with the obligations of a registrant under this subchapter or subchapter II, there is a substantial likelihood that a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine will be used in the illicit manufacture of controlled substances and cause death, serious bodily harm, or abuse of a controlled substance in the absence of an immediate suspension of the registration.

(g) DISPOSITION OF TABLETING MACHINES, ENCAPSULATING MACHINES, AND CRITICAL PARTS

(1) Upon termination, suspension, or revocation of registration, the former registrant may, within 30 days or such additional period designated by the Attorney General for good cause, liquidate any remaining tableting machines, encapsulating machines, critical parts of tableting machines, or critical parts of encapsulating machines by lawfully selling, transferring, or otherwise disposing of the tableting machines, encapsulating machines, critical parts of a tableting machines, or critical parts of encapsulating machines to a registered manufacturer, importer, exporter, or dealer of tableting machines, encapsulating machines, critical parts of tableting machines, or critical parts of encapsulating machines.

(2) Except for the liquidation of remaining inventory to a registrant within 30 days (or approved period) in accordance with paragraph (g)(1) of this section, a former registrant may no longer deal tableting machines, encapsulating machines, critical parts of tableting machines, or critical parts of encapsulating machines.

(h) RECORDS AND REPORTS

(1) Every registrant shall maintain, on a current basis, a complete and accurate record of each tableting machine, encapsulating machine, critical part of a tableting machines, or critical part of an encapsulating machine possessed, manufactured, received, imported, exported, sold, distributed, delivered, or destroyed, with such information, and in such form and manner as the Attorney General may by regulations require.

(2) Every registrant shall, at such time or times, with such information, and in such form and manner as the Attorney General may by regulations require, make periodic reports to the Attorney General.

(3) Every record required under this section shall be kept and be readily retrievable, for at least 10 years, for inspection and copying by officers or employees of the United States authorized by the Attorney General.

(i) REGULATIONS

The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, importation, exportation, and dealing of tableting machines, encapsulating machines, critical parts of tableting machines, and critical parts of encapsulating machines. The Attorney General shall by regulation establish which tableting machines, encapsulating machines, critical parts of tableting machines, and critical parts of encapsulating machines are subject to the registration, recordkeeping, and reporting requirements, and the form, manner, and information to be maintained and furnished.

(j) EFFECTIVE DATE

This section shall become effective 120 days after the date of enactment, except that the Attorney General may by order published in the Federal Register postpone the

effective date of this section for such period as he may determine to be necessary for the efficient administration of this title.

SECTION 6. OFFENSES.

(a) SERIAL NUMBERS.—

(1) Section 402 of the Controlled Substances Act (21 U.S.C. § 842) is amended by striking "or" at the end of (a)(16) and inserting the following after subsection (a)(17):

"(18) to violate subsection (a) of section 310A [21 U.S.C. § 830a];

"(19) to refuse or negligently fail to make a report under subsection (b) of section 310A [21 U.S.C. § 830a]; or"

(2) Section 403 of the Controlled Substances Act (21 U.S.C. § 843) is amended by inserting the following after paragraph (f):

"(g) It shall be unlawful to

"(1) knowingly or intentionally remove, alter, or obliterate any serial number affixed to any tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine that is required to have a serial number pursuant to subsection (a) of section 310A [21 U.S.C. § 830a], and with reasonable cause to believe the serial number is so required;

"(2) transport, ship, receive, or possess any tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an encapsulating machine that is required to have a serial number pursuant to subsection (a) of section 310A [21 U.S.C. § 830a], knowing that the serial number has been removed, obliterated, or altered, and with reasonable cause to believe the serial number is required pursuant to subsection (a) of section 310A [21 U.S.C. § 830a]; or

"(3)

"(A) to possess a tableting machine or an encapsulating machine that is required to have a serial number pursuant to subsection (a) of section 310A [21 U.S.C. § 830a], knowing that the machine does not have a serial number, and with reasonable cause to believe the serial number is required pursuant to subsection (a) of section 310A [21 U.S.C. § 830a];

"(B) In a prosecution for an offense under subsection (A), it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the person possessed the tableting machine or encapsulating machine on the day before the effective date of this provision and, no later than 180 days after that date, or for such additional period designated by the Attorney General for good cause, the person:

"(1) Sold or otherwise transferred the tableting machine or encapsulating machine to a manufacturer, importer, exporter, or dealer of tableting machines or encapsulating machines that is registered under Section 310C(b)(1) [21 U.S.C. § 830c(b)(1)];

"(2) Had a serial number engraved, cast, or otherwise affixed to a non-removable part of the tableting machine or encapsulating machine by a manufacturer, importer, exporter, or dealer of tableting machines or encapsulating machines that is registered under Section 310C(b)(1) [21 U.S.C. § 830c(b)(1)]; or

"(3) Destroyed the tableting machine or encapsulating machine. For purposes of this section, the term "destroy" means to cause such serious damage to the tableting machine or encapsulating machine so that it can no longer be used.

"(h)

(1) Section (g) does not apply to a manufacturer, importer, exporter, or dealer of tableting machines or encapsulating machines that is registered under Section 310C(b)(1) [21 U.S.C. § 830c(b)(1)] or exempt from registration pursuant to Section 310C(b)(2) [21 U.S.C. § 830c(b)(2)].

"(2) Subsection (g) shall become effective two years after the date of enactment, except that the Attorney General may by order published in the Federal Register postpone the effective date of subsection (g) for such period as he may determine to be necessary for the efficient administration of this title."

(b) REGISTRATION OF CERTAIN MACHINES AND PARTS.—

(1) Section 402 of the Controlled Substances Act (21 U.S.C. § 842) is amended by inserting the following after subsection (a)(17):

"(20) to violate subsection (b) or (c) of section 310B [21 U.S.C. § 830b]; or"

(c) REGISTRATION OF MANUFACTURERS, IMPORTERS, EXPORTERS, AND DEALERS OF TABLETING MACHINES, ENCAPSULATING MACHINES, AND CRITICAL PARTS

(1) Section 403 of the Controlled Substances Act (21 U.S.C. § 842) is amended by inserting the following after subsection (a)(17):

"(21) to manufacture, import, export, or deal a tableting machine, encapsulating machine, critical part of a tableting machine, or critical part of an

encapsulating machine without a registration required by section 310C [21 U.S.C. § 830c], except as provided for in Section 310C(g) [21 U.S.C. § 830c(g)]."

(d) CRITICAL PARTS.— Section 403 of the Controlled Substances Act (21 U.S.C. § 843) is amended by inserting the following immediately after the phrase "encapsulating machine," in subsections (a)(6) and (a)(7): "critical part of a tableting machine, critical part of an encapsulating machine,".

Proposal 3: Empower Industry Partners to Identify and Report Suspicious Behavior

Background: Private sector actors in the shipping industry and elsewhere want to do more to stop the flow of fentanyl into our communities. But they lack key information that would enable them to identify—and stop—shipments of concern. This legislation would authorize CBP to share key data with trusted industry partners when merchandise is believed to have been imported in violation of law. Industry partners would also be required to take appropriate action with respect to the information provided; those that do not will be subject to potential penalties.

Text (Empower Industry Partners to Identify and Report Suspicious Behavior (19 U.S.C. § 1628)

SEC. xxx. SHARING OF COMMERCIAL DATA RELATED TO TRADE ENFORCEMENT.

Section 628 of the Tariff Act of 1930 (19 U.S.C. 1628) is amended by:

(1) Creating new section 1628C entitled "Sharing of Commercial Data Related to Trade Enforcement"

(2) Inserting the following under this new section:

"(a) IN GENERAL.—Notwithstanding disclosures by U.S. Customs and Border Protection or special agents of Homeland Security Investigations to rights holders concerning certain suspected Intellectual Property Rights (IPR) violations, if the Commissioner of U.S. Customs and Border Protection or Executive Associate Director of Homeland Security Investigations determines that merchandise is imported or attempted to be imported into the United States in violation of the customs and trade laws of the United States, or that merchandise is exported or attempted to be exported from the United States in violation of law, and determines that the sharing of data or information for that specific shipment with a person as defined in paragraph (b) would promote compliance with such laws, the Commissioner or Executive Associate Director may transmit some or all of the data defined in paragraph (c) for that specific shipment.

(b) PERSON DESCRIBED.— A person described in this subsection is an importer, a carrier, a broker, an online marketplace or other similar market platform that facilitates the sale, importation or exportation of merchandise into or from the United States, an express consignment operator, a freight forwarder, or any other entity as may be prescribed by the Secretary in regulations, that plays a role in the sale, importation or exportation of merchandise, or the facilitation thereof, into or from the United States.

(c) DATA DEFINED.— The data defined in this subsection are:

(1) Name and address of the shipper, seller, or any other person described in subsection (b);

(2) Name and address of manufacturer or producer;

(3) Type of commodity;

(4) Harmonized Tariff Schedule classification;

(5) Weight and/or value of shipment;

(6) Name of carrier;

(7) Law(s) or regulation(s) allegedly violated or violated;

(8) Entry number or other identification number such as air waybill or simple bill;

(9) Methods and means of the violation or any alleged violation, and

(10) Any other data element or information as defined in such regulations as the Secretary may prescribe.

(d) VIOLATION. —

(1) If the Commissioner transmits data or information under subsection (a) and that person fails to exercise the requisite standard of care under the customs and trade laws of the United States or the laws of the United States governing export in preventing an importation or exportation, or any attempt thereof, the person shall be liable for a penalty or liquidated damages as provided by law.

(2) Nothing in this section shall preclude the Commissioner or government agency from taking any enforcement action authorized by law regardless of whether the Commissioner shares data or information under subsection (a).”

(e) CONFIDENTIALITY OF RETURN INFORMATION.—Nothing in this section shall be construed to authorize the inspection or disclosure of any return or return information as defined by section 6103(b) of the Internal Revenue Code (26 U.S.C. 6103(b))

Proposal 4: Reinstate Subpoena Authority to Investigate Suspicious Exports and to Investigate Criminal Use of the Mail

Background: This legislation would reinstate the customs officer authority to issue administrative subpoenas to help identify suspicious exports, such as transshipments of diverted fentanyl precursor chemicals and equipment. It would also reinstate authority of the United States Postal Service to issue administrative subpoenas to help investigate use of the mail for criminal activities, such as to ship illicit fentanyl and its precursor chemicals and equipment.

Text (Reinstate Subpoena Authority to Investigate Suspicious Exports (50 U.S.C. § 4820)

SEC. xxx. SUBPOENA AUTHORITY

Chapter 58 of Title 50, United States Code, is amended by striking subsection (k) in section 4820 and replacing it with the following:

"k. Authority of The Department of Homeland Security. —

(1) In General. – Nothing in the Act shall be construed to limit or otherwise affect the enforcement authorities of the Department of Homeland Security

(2) Customs Officer Authority. –

(A) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection may take appropriate action to ensure observance of this subchapter as to the enforcement of export controls.

(B) To the extent necessary or appropriate to the enforcement of export controls, U.S. Immigration and Customs Enforcement may make investigations into violations of this subchapter both within and outside of the United States, and may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person.

(C) To the extent necessary or appropriate to the enforcement of export controls, U.S. Immigration and Customs Enforcement Special Agents and U.S. Customs and Border Protection Officers may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof."

Text (Reinstate Subpoena Authority to for USPS to Investigate Criminal Use of the Mail (39 U.S.C. § 3016))

SEC. xxx. UNITED STATES POSTAL SERVICE SUBPOENA AUTHORITY.

Section 3016(a)(1) of title 39, United States Code, is amended—

(1) by redesignating subparagraph (B) as subparagraph (D);

(2) by striking subparagraph (A) and inserting the following:

"(A) IN GENERAL.—In any investigation relating to a covered offense, the Postmaster General may issue in writing and cause to be served a subpoena requiring the production and testimony described in subparagraph (B). In this subparagraph, the term 'covered offense' means a violation of—

"(i) any section in this chapter;

"(ii) any section of chapter 83 of title 18 insofar as such violation involves the use of the mails;

"(iii) any other provision of law enumerated in section 3001(a).

"(B) PRODUCTION AND TESTIMONY.—Except as provided in subparagraph (C), a subpoena issued under subparagraph (A) may require—

"(i) the production of any records (including books, papers, documents, and other tangible things that constitute or contain evidence) that the Postmaster General considers relevant or material to such investigation; and

"(ii) testimony by the custodian of the things required to be produced concerning the production and authenticity of those things.

"(C) APPLICATION.—A subpoena issued in connection with an investigation under section 3005(a) shall not require testimony as set forth in subparagraph (B)(ii).";

and

(3) in subparagraph (D), as redesignated by paragraph (1) of this section, by amending clause (iii) to read as follows:

"(iii) delegation of subpoena approval authority be limited to the Postal Service's General Counsel, a Deputy General Counsel, or the Chief Postal Inspector.".

DETER Fentanyl Traffickers

Proposal 5: Permanently Schedule Fentanyl-Related Substances Consistent with the Administration's 2021 Recommendations to Congress

Background: Traffickers are continually altering the chemical structure of fentanyl to evade regulation and prosecution, sometimes with tragic results. The Administration and Congress worked together to temporarily close this loophole by making all fentanyl-related substances Schedule I drugs, which carry additional reporting requirements and penalties. However, this measure expires on December 31, 2024. This legislation would permanently make all illicitly produced fentanyl-related substances (FRS) Schedule I drugs consistent with the Administration's 2021 recommendations to Congress, creating a streamlined process for HHS to identify and remove or reschedule FRS that are subsequently found to not have a high potential for abuse; require a study of the impact of permanent FRS class-wide scheduling on research, civil rights, and illicit manufacturing and trafficking and including additional provision to improve public safety.

Text (From the 2021 Administration recommendations on class-wide scheduling of fentanyl-related substances).

SEC. xxx. SHORT TITLE.

This act may be cited as the "---------".

SEC. 2. CLASS SCHEDULING OF FENTANYL-RELATED SUBSTANCES.

Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended by adding at the end of Schedule I the following:

"(e)(1) Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of fentanyl-related substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

"(2) In paragraph (1), except as provided in paragraph (3), the term 'fentanyl-related substances' means any substance that is structurally related to fentanyl by one or more of the following modifications:

"(A) By replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle.

"(B) By substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups.

"(C) By substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups.

"(D) By replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle.

"(E) By replacement of the N-propionyl group with another acyl group.

"(3) A substance that meets the criteria of the term fentanyl-related substances in paragraph (2), but which is controlled by action of the Attorney General pursuant to section 201 (21 U.S.C. 811) of this title, or which is otherwise expressly listed in a part

of the schedules other than schedule I(e), or which is removed from schedule I(e) pursuant to section 201(k) of this title ((21 U.S.C. 811(k)), shall not be considered a fentanyl-related substance for purposes of this title.

"(4) The Attorney General may by order publish in the Federal Register and the Code of Federal Regulations a list of individual substances that meet the definition of fentanyl-related substances in paragraph (2). The absence of a substance on such list does not negate the control status of such substance that meets the definition in paragraph (2).".

"(5) Notwithstanding any other provision of this subchapter or subchapter II, an offense involving the trafficking of a fentanyl-related substance shall not be subject to a quantity-based mandatory minimum penalty.".

SEC. 3. PENALTY PROVISIONS WITH RESPECT TO FENTANYL-RELATED SUBSTANCES – DOMESTIC OFFENSES

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) in paragraph (b)(1)(A)(vi), by deleting the existing text and inserting the following:

"(I) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl; or

(II) 100 grams or more of a mixture or substance containing a detectable amount of any analogue of fentanyl that is controlled in schedule I or II except for a fentanyl-related substance as defined in schedule I(e) of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c));";

(2) in paragraph (b)(1)(B)(vi), by deleting the existing text and inserting the following:

"(I) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl; or

(II) 10 grams or more of a mixture or substance containing a detectable amount of any analogue of fentanyl that is controlled in schedule I or II except for a fentanyl-related substance as defined in schedule I(e) of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c));" and

(3) in paragraph (b)(1)(C), by inserting after "a controlled substance in schedule I or II," the phrase ", including a fentanyl-related substance as defined in schedule I(e) of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)),".

(4) Rule of Construction. The forgoing amendments to 21 U.S.C. 841(b)(1)(A)(vi) and 841(b)(1)(B)(vi) add the common name for fentanyl to the text of these provisions but do not change the scope of the statute related to fentanyl in any way.

SEC. 4. PENALTY PROVISIONS WITH RESPECT TO FENTANYL-RELATED SUBSTANCES – IMPORT AND EXPORT OFFENSES.

Section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended—

(1) in paragraph (b)(1)(F), by deleting the existing text and inserting the following:

"(I) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl; or

(II) 100 grams or more of a mixture or substance containing a detectable amount of any analogue of fentanyl that is controlled in schedule I or II except for a fentanyl-related substance as defined in schedule I(e) of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c));";

(2) in paragraph (b)(2)(F), by deleting the existing text and inserting the following:

"(I) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl; or

(II) 10 grams or more of a mixture or substance containing a detectable amount of any analogue of fentanyl that is controlled in schedule I or II except for a fentanyl-related substance as defined in schedule I(e) of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c));" and

(3) in paragraph (b)(3), by inserting after "a controlled substance in schedule I or II," the phrase

", including a fentanyl-related substance as defined in schedule I(e) of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)),".

(4) Rule of Construction. The forgoing amendments 960(b)(1)(F) and 960(b)(2)(F) add the common name for fentanyl to the text of these provisions but do not change the scope of the statute related to fentanyl in any way.

SEC. 5. REMOVAL FROM SCHEDULE I OF FENTANYL-RELATED SUBSTANCES.

Section 201 of the Controlled Substances Act (21 U.S.C. 811) is amended by adding at the end the following new subsection:

"(k) REMOVAL FROM SCHEDULE I OF FENTANYL-RELATED SUBSTANCES.—

"(1) DETERMINATION RESULTING IN REMOVAL.—If the Secretary determines, taking into consideration factors as set forth in paragraph (3), that a fentanyl- related substance has a potential for abuse less than the drugs or other substances in schedule V, the Secretary shall submit to the Attorney General a scientific and medical evaluation of that substance supporting that conclusion. The evaluation and conclusion of the Secretary shall be in writing and shall include the bases therefor. The scientific and medical matters contained in the Secretary's evaluation shall be binding on the Attorney General, and, within 90 days of receiving such evaluation and conclusion, the Attorney General shall issue an order removing such substance from the schedules.

"(2) DETERMINATION RESULTING IN RESCHEDULING.—If the Secretary determines, taking into consideration factors as set forth in paragraph (3), that a fentanyl- related substance has a potential for abuse less than the drugs or other substances in schedules I and II, and has a currently accepted medical use, the Secretary shall submit to the Attorney General a scientific and medical evaluation of that substance supporting that conclusion. The evaluation and conclusion of the Secretary shall be in writing and shall include the bases therefor. The scientific and medical matters contained in the Secretary's evaluation shall be binding on the Attorney General and, within 90 days of receiving such evaluation and conclusion, the

Attorney General shall issue an order removing such substance from schedule I and controlling such substance under a different schedule.

"(3) EVALUATION FACTORS.—

"(A) In making the evaluations and conclusions described in paragraphs (1) and (2), the Secretary shall consider the factor listed in paragraph (2) of subsection (c) and, to the extent evidence exists as to such factors, the factors listed in paragraphs (1), (3), and (6) of such subsection and any information submitted by the Attorney General. The Secretary may also consider factors (4), (5), and (7) of subsection (c) if the Secretary finds that reliable evidence exists with respect to such factors.

"(B) An assessment consisting of the following studies, each of them performed according to scientific methods and protocols commonly accepted in the scientific community, shall suffice to constitute consideration of the factor listed in paragraph (2) of subsection (c) if the Secretary determines that such assessment is adequate for that purpose:

"(i) A receptor binding study that can demonstrate whether the substance has affinity for the human mu opioid receptor.

"(ii) An in vitro functional assay that can demonstrate whether the substance has agonist activity at the human mu opioid receptor.

"(iii) One or more in vivo animal behavioral studies that can demonstrate whether the substance has abuse-related drug effects consistent with mu opioid agonist activity, such as demonstrating similarity to the effects of morphine.

"(4) ADVANCE NOTICE REGARDING EVALUATION AND CONCLUSION.—The Secretary shall give the Attorney General at least 30 days advance notice before sending the Attorney General an evaluation and conclusion under paragraph (1) or (2) with respect to a fentanyl-related substance.

"(5) EXCEPTION FOR TREATY OBLIGATIONS.—If a fentanyl-related substance is a substance that the United States is obligated to control under international treaties, conventions, or protocols in effect on the date of enactment of the ____Act, this subsection shall not require the Attorney General to remove such substance from control or to place such substance in a schedule less restrictive than that which the Attorney General determines is necessary to carry out such obligations.

"(6) IDENTIFICATION OF FENTANYL-RELATED SUBSTANCES.—If the Attorney General determines that a substance is a fentanyl-related substance, as that term is defined in subsection (e)(2) in Schedule I within section 202(c) (21 U.S.C. 812(c)), the Attorney General shall, within 30 days of such determination, notify the Secretary, and shall include in such notification the identity of the substance, its structure, and the basis for the determination.

"(7) PETITIONS FOR MOVING A FENTANYL-RELATED SUBSTANCE UNDER THE DRUG SCHEDULES.—"(A) IN GENERAL.—If a person petitions the Attorney General to remove a fentanyl-related substance from schedule I(e) or to reschedule such a substance to another schedule, or place a fentanyl-related substance under Schedule I, the Attorney General shall consider such a petition under the procedures and

according to the standards set forth in sections 201(a) and (b) (21 U.S.C. 811(a) and (b)) and in section 1308.43 of title 21, Code of Federal Regulations.

"(B) ATTORNEY GENERAL TO INFORM SECRETARY.—Within 30 days of accepting a petition, the Attorney General shall forward a copy of the petition to the Secretary.

"(C) DETERMINATION PROCEDURE NOT PRECLUDED BY FILING OF PETITION.—The filing of a petition under this paragraph shall not preclude the Secretary's making a determination and sending an evaluation and conclusion under paragraph (1) or (2).

"(8) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to preclude the Attorney General from transferring a substance listed in schedule I to another schedule, or removing such substance entirely from the schedules, pursuant to other provisions of this section and section 202 (21 U.S.C. 812). Additionally, a fentanyl-related substance could be moved from a lower schedule to schedule I if information supports such control.

"(9) SUBSEQUENT CONTROLLING OF REMOVED SUBSTANCE.—A substance removed from schedule I pursuant to this subsection may, at any time, be controlled pursuant to the other provisions of this section and section 202 (21 U.S.C. 812) without regard to the removal pursuant to this subsection.".

SEC. 6. PAST CASES INVOLVING REMOVED OR RESCHEDULED SUBSTANCES.

(a) DOMESTIC CASES.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding the following new paragraph at the end of subsection (b):

"(8)(A) In the case of a defendant whose offense of conviction under this subchapter involved a fentanyl-related substance that has since been removed from designation as a fentanyl-related substance for purposes of this title and has been placed on any schedule other than schedule I or II or has been removed from the controlled substance schedules, the sentencing court may, on motion of the defendant, the Bureau of Prisons, the attorney for the Government, or on its own motion, after considering the factors set forth in section 3553(a) of title 18, United States Code, vacate the previously imposed sentence, or impose a reduced sentence on any count of conviction as if the removal or other change in schedule were in effect at the time that the offense was committed. Nothing in this section may be construed to require a court to vacate or reduce any sentence.

"(B) DEFENDANT NOT REQUIRED TO BE PRESENT.—Notwithstanding Rule 43 of the Federal Rules of Criminal Procedure, the defendant is not required to be present at any hearing on whether to vacate or reduce a sentence pursuant to this Section."

(b) IMPORT AND EXPORT CASES.—Section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by adding the following new paragraph at the end of subsection (b):

"(8) In the case of a defendant whose offense of conviction under this subchapter involved a fentanyl-related substance that has since been removed from schedule I, or has been placed on any schedule other than schedule I or II, the

provisions of section 401(b)(8) of the Controlled Substances Act (21 U.S.C. 841(b)(8)) shall be applicable."

SEC. 7. REGISTRATION REQUIREMENTS RELATED TO RESEARCH.

(a) ALTERNATIVE REGISTRATION PROCESS FOR SCHEDULE I RESEARCH
Section 303 of the Controlled Substances Act (21 U.S.C. 823) is amended by adding at the end the following new subsection:

"(m) SPECIAL PROVISIONS FOR THOSE CONDUCTING CERTAIN RESEARCH WITH SCHEDULE I CONTROLLED SUBSTANCES.—

"(1) IN GENERAL.—Notwithstanding subsection (f), a practitioner may conduct research that is described by paragraph (2) and that is with one or more schedule I substances if one of the following conditions is satisfied:

"(A) RESEARCHER WITH A CURRENT SCHEDULE I OR II RESEARCH REGISTRATION.—If the practitioner is registered to conduct research with a controlled substance in schedule I or II, the practitioner may conduct research under this paragraph 30 days after the practitioner has sent a notice to the Attorney General containing the following information, with respect to each substance with which the research will be conducted:

"(i) The chemical name of the substance.

"(ii) The quantity of the substance to be used in such research.

"(iii) Demonstration that the research is in the category described by paragraph (2), which demonstration can be satisfied—

"(I) in the case of a grant, contract, cooperative agreement, or other transaction, or intramural research project, by identifying the sponsoring agency and supplying the number of the grant, contract, cooperative agreement, other transaction, or project; or

"(II) in the case of an application under section 505(i) of the Federal Food, Drug, and Cosmetic Act, by supplying the application number and the sponsor of record on such application. "(iv) Demonstration that the researcher is authorized to conduct research with respect to the substance under the laws of the State in which the research will take place.

"(B) RESEARCHER WITHOUT A CURRENT SCHEDULE I OR II RESEARCH REGISTRATION.—If the practitioner is not currently registered to conduct research with a controlled substance in schedule I or II, the practitioner may send a notice to the Attorney General containing the information listed in subparagraph (A), with respect to each substance with which the research will be conducted, and the Attorney General will treat such notice as a sufficient application for a research registration. Within 45 days of receiving such a notice that contains all information required by subparagraph (A), the Attorney General shall register the applicant, or serve an order to show cause upon the applicant in accordance with section 824(c) of this title.

"(C) VERIFICATION OF INFORMATION.—On request from the Attorney General, the Secretary of Health and Human Services or the Secretary

of Veterans Affairs, as appropriate, shall verify information submitted by an applicant under subparagraph (A)(iii).

"(2) RESEARCH SUBJECT TO EXPEDITED PROCEDURE.—Research is described by this paragraph if—

"(A) the research is the subject of an application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for the investigation of a drug which is in effect in accordance with section 312.40 of title 21, Code of Federal Regulations; or

"(B) the research is conducted by the Department of Health and Human Services or the Department of Veterans Affairs or is funded partly or entirely by a grant, contract, cooperative agreement, or other transaction from the Department of Health and Human Services or the Department of Veterans Affairs.

"(3) ELECTRONIC SUBMISSIONS.—The Attorney General shall provide a means to permit practitioners to submit notifications under paragraph (1) electronically.

"(4) LIMITATION ON AMOUNTS.—A practitioner conducting research with a schedule I substance pursuant to this subsection shall only be permitted to possess the amounts of schedule I substance identified in—

"(A) the notification to the Attorney General under paragraph (1); or

"(B) a supplemental notification that the practitioner may send if the practitioner needs additional amounts for the research, which supplemental notification shall include the registrant's name, the additional quantity needed of the substance, and an attestation that the research to be conducted with the substance is consistent with the scope of the research that was the subject of the notification under paragraph (1).

"(5) IMPORTATION AND EXPORTATION REQUIREMENTS NOT AFFECTED.—Nothing in this section alters the requirements of part A of title III, regarding the importation and exportation of controlled substances.".

(b) SEPARATE REGISTRATIONS NOT REQUIRED FOR ADDITIONAL RESEARCHER IN SAME INSTITUTION.—Section 302 of the Controlled Substances Act (21 U.S.C. 822) is amended in subsection (c), by adding the following paragraph:

"(4) An agent or employee of a research institution that is conducting research with a controlled substance if—

"(A) such agent or employee is acting within the scope of his or her professional practice;

"(B) another agent or employee of such institution is registered to conduct research with a controlled substance in the same schedule;

"(C) the researcher who is so registered—

"(i) informs the Attorney General of the name, position title, and employing institution of the agent or employee who is not separately registered;

"(ii) authorizes such agent or employee to perform research under the registered researcher's registration; and

"(iii) affirms that all acts taken by such agent or employee involving controlled substances shall be attributable to the registered researcher, as if the researcher had directly committed such acts, for purposes of any proceeding under section 304(a) (21 U.S.C. 824(a)) to suspend or revoke the registration of the registered researcher; and

"(D) the Attorney General does not, within 30 days of receiving the information, authorization, and affirmation described in subparagraph (C), refuse, for a reason listed in section 304(a) (21 U.S.C. 824(a)), to allow such agent or employee to possess such substance without a separate registration.".

(c) SINGLE REGISTRATION FOR RELATED RESEARCH SITES.—Such section 302 is further amended in subsection (e) by adding at the end the following new paragraph:

"(3)(A) Notwithstanding paragraph (1), a person registered to conduct research with a controlled substance under section 303(f) may conduct such research under a single registration if—

"(i) such research occurs exclusively on sites all of which are within the same city or county and are under the control of the same institution, organization, or agency; and

"(ii) the researcher notifies the Attorney General of all sites where the research will be conducted or where the controlled substance will be stored or administered prior to commencing such research.

"(B) A site described by subparagraph (A) shall be included in such registration only if the researcher has notified the Attorney General of such site—

"(i) in the application for such registration; or

"(ii) before the research is conducted, or before the controlled substance is stored or administered, at such site."

"(C) The Attorney General may, in consultation with the Secretary of Health and Human Services, issue regulations addressing—

"(i) the manner in which controlled substances may be delivered to the research sites described in subparagraph (A);

"(ii) the storage and security of controlled substances at such research sites;

"(iii) the maintenance of records for such research sites; and

"(iv) any other matters necessary to ensure effective controls against diversion at such research sites.".

(d) NEW INSPECTION NOT REQUIRED IN CERTAIN SITUATIONS.—Such section 302 is further amended in subsection (f)—

(1) by striking "(f) The" and inserting "(f)(1) The"; and

(2) by adding a new paragraph, as follows:

"(2)(A) If a person is registered to conduct research with a controlled substance and applies for a registration, or for a modification of a registration, to conduct research with a second controlled substance that is in the same schedule as the first controlled substance, or is in a schedule with a higher numerical designation than the schedule of the first controlled

substance, a new inspection by the Attorney General of the registered location is not required.

"(B) Nothing in this paragraph shall prohibit the Attorney General from conducting any inspection if the Attorney General deems it necessary to ensure that the registrant maintains effective controls against diversion.".

(e) CONTINUATION OF RESEARCH ON SUBSTANCES NEWLY ADDED TO SCHEDULE I.—Such section 302 is further amended by adding at the end the following new subsection:

"(h) CONTINUATION OF RESEARCH ON SUBSTANCES NEWLY ADDED TO SCHEDULE I.—If a person is conducting research on a substance at the time the substance is added to schedule I, and such person is already registered to conduct research with a controlled substance in schedule I, then—

"(1) the person shall, within 90 days of the scheduling of the newly-scheduled substance, submit a completed application for registration or modification of existing registration, to conduct research on such substance, in accordance with the regulations issued by the Attorney General;

"(2) the person may, notwithstanding subsections (a) and (b), continue to conduct the research on such substance until the person withdraws such application or until the Attorney General serves on the person an order to show cause proposing the denial of the application pursuant to section 304(c);

"(3) if the Attorney General serves such an order to show cause and the person requests a hearing, such hearing shall be held on an expedited basis and not later than 45 days after the request is made, except that the hearing may be held at a later time if so requested by the person; and

"(4) if the person sends a copy of the application referred to in that paragraph to a manufacturer or distributor of such substance, receipt of such copy by such manufacturer or distributor shall constitute sufficient evidence that the person is authorized to receive such substance.".

(f) TREATMENT OF CERTAIN MANUFACTURING ACTIVITIES AS COINCIDENT TO RESEARCH.—Such section 302 (21 U.S.C. 822) is further amended by adding at the end the following new subsection:

"(i) TREATMENT OF CERTAIN MANUFACTURING ACTIVITIES AS COINCIDENT TO RESEARCH.—

"(1) IN GENERAL.—Except as specified in paragraph (3), a person who is registered to perform research on a controlled substance may perform manufacturing activities with small quantities of that substance, including activities listed in paragraph (2), without being required to obtain a manufacturing registration, if such activities are performed for the purpose of the research and if the activities and the quantities of the substance involved in those activities are stated in—

"(A) a notification submitted to the Attorney General under section 303(*l*);

"(B) a protocol filed with an application for registration approval, under section 303(f); or

"(C) a notification to the Attorney General that includes the registrant's name and an attestation that the research to be conducted with the small

quantities of manufactured substance is consistent with the scope of the research that is the basis for the registration.

"(2) ACTIVITIES INCLUDED.—Activities permitted under paragraph (1) include—

"(A) processing the substance to create extracts, tinctures, oils, solutions, derivatives, or other forms of the substance consistent the information provided as part of a notification submitted to the Attorney General under section 303(m) (21 U.S.C. 823(m) or a research protocol filed with the application for registration approval; and

"(B) dosage form development studies performed for the purpose of satisfying FDA regulatory requirements for submitting an investigational new drug application.

"(3) EXCEPTION REGARDING MARIJUANA.—The authority under paragraph (1) to manufacture substances does not include authority to grow marijuana.".

(g) TRANSPARENCY REGARDING SPECIAL PROCEDURES.—Section 303 of such Act (21 U.S.C. 823) is further amended by adding at the end the following new subsection:

"(n) TRANSPARENCY REGARDING SPECIAL PROCEDURES.—

"(1) IN GENERAL.—If the Attorney General determines, with respect to a controlled substance, that an application by a practitioner to conduct research with such substance should be considered under a process, or subject to criteria, different from the process or criteria applicable to applications to conduct research with other controlled substances in the same schedule, the Attorney General shall make public, including by posting on the website of the Drug Enforcement Administration—

"(A) the identities of all substances for which such determinations have been made;

"(B) the process and criteria that shall be applied to applications to conduct research with such substances; and

"(C) how such process and criteria differ from those applicable to applications to conduct research with other controlled substances in the same schedule.

"(2) TIMING OF POSTING.—The Attorney General shall make such information public upon making such determination, regardless of whether a practitioner has submitted such an application at that time.".

SEC. 8. RULEMAKING.

(a) INTERIM FINAL RULES.—The Attorney General shall, within one year of enactment of this Act, issue rules to implement the provisions of this Act and may issue such rules as interim final rules.

(b) PROCEDURE FOR FINAL RULE.—A rule issued by the Attorney General as an interim final rule under subsection (a) shall become immediately effective as an interim final rule without requiring the Attorney General to demonstrate good cause therefor. The interim final rule shall give interested persons the opportunity to comment and to request a hearing. After the

conclusion of such proceedings, the Attorney General shall issue a final rule in accordance with section 553 of title 5, United States Code.

SEC. 9. GAO REPORT.

(a) GENERAL.-- Three years after the date of enactment of this Act, the Comptroller General of the United States shall publish a report analyzing the implementation and impact of permanent class scheduling of fentanyl-related substances, which report shall include:

(1) an analysis of the impact, if ascertainable, on research of fentanyl-related substances;

(2) an analysis of any actions taken to remove or reschedule in a different class any fentanyl-related substance;

(3) an analysis of the impact of permanent scheduling on the unlawful importation, manufacture, trafficking, and use of fentanyl-related substances, with data collected concerning the proliferation of fentanyl-related substances since class scheduling was instituted;

(4) an analysis of sentences attributable to criminal charges involving fentanyl-related substances, comparing those sentences to sentences attributable to criminal charges involving fentanyl and individually scheduled fentanyl analogues; and

(5) an analysis of the efficacy of class scheduling generally, in terms of reducing the proliferation of new controlled substance analogues.

(b) CONSULTATIONS.--In developing the report, the Comptroller General shall consider the views of the Department of Health and Human Services, the Department of Justice, the Department of Homeland Security, the Department of State, the Office of National Drug Control Policy and the scientific and medical research community, the State, Tribal, and local law enforcement community, and the civil rights and criminal justice reform communities. To the
greatest extent possible, the report should be based upon reliable data and empirical information.

Proposal 6: Make Xylazine a Schedule III Drug

Background: Fentanyl alone can be lethal, but fentanyl mixed with xylazine—a non-opiate sedative that is currently approved for veterinary use in the United States—is even deadlier. The Administration calls on Congress to pass the core elements of the bipartisan Combating Illicit Xylazine Act, which would make xylazine a Schedule III drug subject to additional reporting requirements, would impose additional tracking and reporting requirements on the sale and distribution of xylazine, and subject those who unlawfully distribute xylazine to enhanced penalties.

Text (Make Xylazine a Schedule III Drug)

SEC. xxx. DEFINITIONS.

(a) In General.—In this Act, the term "xylazine" has the meaning given the term in paragraph (60) of section 102 of the Controlled Substances Act, as added by subsection (b) of this section.

(b) Controlled Substances Act.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by redesignating the second paragraph (57) (relating to serious drug felony) and paragraph (58) as paragraphs (58) and (59), respectively; and

(2) by adding at the end the following:

"(60) The term 'xylazine' means the substance xylazine, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible.".

SEC. 2. ADDING XYLAZINE TO SCHEDULE III.

Schedule III of section 202(c) of the Controlled Substances Act (21 U.S.C. 812) is amended by adding at the end the following:

"(f) Xylazine.".

SEC. 3. AMENDMENTS.

(a) Amendment.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by striking paragraph (27) and inserting the following:

"(27)(A) Except as provided in subparagraph (B), the term 'ultimate user' means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

"(B) In the case of xylazine, other than for a drug product approved under section 505(b) or (j) of the Federal Food, Drug, and Cosmetic Act, the term 'ultimate user' means a person other than a veterinarian where both of the following conditions in (i) and (ii) are satisfied—

"(i) the xylazine was dispensed to a person by either:

(I) a veterinarian registered under this subchapter, or

(II) a pharmacy registered under this subchapter pursuant to the prescription of a veterinarian registered under this subchapter; and

"(ii) the person possesses the xylazine for—

(I) an animal owned by him or by a member of his household;

(II) an animal under his care;

(III) use in government animal control programs authorized under applicable federal, State, Tribal, or local law; or

(IV) use in wildlife or zoo animals authorized under applicable federal, State, Tribal, or local law."

"(C) For the purposes of subparagraph (B), the term 'person' includes a government agency or business where animals are located as well as an employee or agent of an agency or business acting within the scope of their employment or agency."

(b) Facilities.—An entity that manufactures xylazine, as of the date of enactment of this Act, shall not be required to make capital expenditures necessary to install the security standard required of schedule III of the Controlled Substances Act (21 U.S.C. 801 et seq.) for the purposes of manufacturing xylazine.

(c) Labeling.—The requirements related to labeling, packaging, and distribution logistics of a controlled substance in schedule III of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) shall not take effect for xylazine until the date that is 270 days after the date of enactment of this Act.

(d) Clarification.—Nothing in this Act, or the amendments made by this Act, shall be construed to require the registration of an ultimate user of xylazine under the Controlled Substances Act (21 U.S.C. 801 et seq.) in order to possess xylazine in accordance with section 102(27)(B) of that Act (21 U.S.C. 802(27)(B)).

SEC. 4. ARCOS TRACKING.

Section 307(i) of the Controlled Substances Act (21 U.S.C. 827) is amended—

(1) in the matter preceding paragraph (1)—

(A) by inserting "or xylazine" after "gamma hydroxybutyric acid";

(B) by inserting "or 512" after "section 505"; and

(C) by inserting "respectively," after "the Federal Food, Drug, and Cosmetic Act,"; and

(2) in paragraph (6), by inserting "or xylazine" after "gamma hydroxybutyric acid".

SEC 5. SENTENCING COMMISSION.

Pursuant to the authority of the United States Sentencing Commission under section 994(p) of title 28, United States Code, the Commission shall review and amend the guidelines and policy statements, including drug conversion tables, of the Commission applicable to a person convicted of an offense under section 401 of the Controlled Substances Act (21 U.S.C. 841) or section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) to ensure that the guidelines and policy statements are consistent with the amendments made by this Act. Such review and amendments should consider the common forms of xylazine as well as its use alongside other scheduled substances.

SEC. 6. REPORT TO CONGRESS ON XYLAZINE.

(a) Initial Report.—Not later than 1year after the date of the enactment of this Act, the Attorney General, acting through the Administrator of the Drug Enforcement Administration and in coordination with the Commissioner of Food and Drugs, shall submit to Congress a report on the

prevalence of illicit use of xylazine in the United States and the impacts of such use, including—

(1) where the drug is being diverted;

(2) where the drug is originating; and

(3) whether any analogues to xylazine, or related or derivative substances, exist and present a substantial risk of abuse.

(4) whether and to what extent the illicit supply of xylazine derives from the licit supply chain; and

(5) recommendations for Congress with respect to whether xylazine should be transferred to another schedule under section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) Additional Report.—Not later than 3 years after the date of the enactment of this Act, the Attorney General, acting through the Administrator of the Drug Enforcement Administration and in coordination with the Commissioner of Food and Drugs, shall submit to Congress a report updating Congress on the prevalence and proliferation of xylazine trafficking and misuse in the United States, including -

(A) the status and results of research on the impact xylazine has on human health; and

(B) the effects of the classification of xylazine under the Controlled Substances Act (21 U.S.C. 801 et seq.) on the prevalence of xylazine trafficking, misuse, and proliferation in the United States.

Proposal 7: Stop Unlawful Imports

Background: This legislation would significantly increase penalties for the unlawful importation of narcotics, precursors, and manufacturing paraphernalia from several hundred dollars for low-value shipments to a base of $5,000. The legislation would also add new penalties for falsely manifesting goods bound for the United States – providing an additional penalty for those who fail to appropriately manifest controlled substances, listed chemicals, and related machinery.

Text (Increased Penalties (19 U.S.C. § 1595a & 19 U.S.C. § 1584)

SEC. xxx. AIDING UNLAWFUL IMPORTATION.

Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended –

(1) in in subsection (b)

(A) by striking "Every" and inserting "Notwithstanding whether the merchandise is seized, every" before "person who directs, assists financially or otherwise";
(B) by striking "in any unlawful activity mentioned in the preceding subsection" and inserting "in the importation, introduction, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation; or the attempted introduction or attempted importation, introduction, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation; of merchandise contrary to law";
(C) by inserting "domestic" before "value of the article";
(D) by inserting ", but not less than $5,000" after "article or articled introduced or attempted to be introduced".

SEC. xxx. FALSITY OR LACK OF MANIFEST; PENALTIES.

Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended by striking all of (a)(2) and replacing it with the following:

"(2) If any of such merchandise so found consists of:

(A) a controlled substance, the responsible party or parties shall be liable to a penalty of $1,000 for each ounce of controlled substance found.

(B) a listed chemical the responsible party or parties shall be liable to a penalty of $500 for each ounce thereof so found.

(C) a tableting machine, encapsulating machine, a critical part of tableting machine, or a critical part of an encapsulating machine,

the responsible party or parties shall be liable to a penalty of $5,000.

(D) Definitions.

(i) Responsible party. As used in this section, the responsible party includes the master of a vessel, person in charge of a vehicle, aircraft pilot, legal or equitable owner of a conveyance, person in control of the conveyance, any person who submitted manifest information to U.S. Customs and Border Protection, or any person otherwise directly or indirectly responsible for the controlled or regulated substance; controlled or regulated raw material, precursor chemical, or product; or controlled or regulated equipment or device.

(ii) Controlled substance. As used in this section, a controlled substance has the meaning given that term in section 802(6) of title 21.

(iii) Listed chemical. As used in this section, a listed chemical has the same meaning given the term in section 802(33) of title 21.

(E) Such penalties shall, notwithstanding the proviso in section 1594 of this title (relating to the immunity of conveyances or vehicles used as common carriers), constitute a lien upon such conveyances which may be enforced by a libel in rem; except that the master or owner of a conveyance used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the conveyances shall not be held subject to the lien, if it appears to the satisfaction of the Secretary, in his discretion, that, regardless of ownership of the individual container or other instrument of international traffic in which such merchandise was found, the master, the officers (including licensed and unlicensed officers and petty officers), the legal or equitable owner of the conveyance, the person in control of the conveyance, or the person who submitted manifest information to U.S. Customs and Border Protection for the conveyance, knew, or could not, by the exercise of the highest degree of care and diligence, have known, that such merchandise defined in subsections (D)(ii) through (iv) of this section was on board. Clearance of any such conveyances may be withheld until such penalties are paid or until a bond, satisfactory to U.S. Customs and Border Protection, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such conveyance under any other provision of law."

Proposal 8: Increase Penalties on the Manufacturers, Distributors, and Importers of Deadly Drugs

Background: These provisions would increase penalties on those who unlawfully manufacture and distribute fentanyl; add new penalties for those who make and sell devices used for the illegal manufacture of counterfeit pills; and require an increase in the sentencing guidelines for, among other things, those who make or sell large numbers of fake pills or who knowingly distribute controlled substances to minors.

Text (Increased Penalties for Manufacturing and Distributing Materials Used to Make Fentanyl (21 U.S.C. § 843)

SEC. xxx. APPLYING PENALTY ENHANCEMENTS TO KEY ITEMS USED IN THE COUNTERFEITING OF DRUGS.

(a) Title 21, United States Code, Section 843(d)(2), is amended by adding "fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide), analogues of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propenamide), or fentanyl-related substances," after "methamphetamine" and by adding "(5)," after "violates paragraph" and by adding "or not more than 15 years in the case of such violation involving more than 1,000 kilograms of a chemical, product, or material or more than 100 tableting machines or encapsulating machines," after "shall be sentenced to a term of imprisonment of not more than 10 years,"

(b) Title 21, United States Code, Section 843(d)(2)(a), is amended by adding "(5)," after "a violation of paragraph".

(c) Pursuant to its authority under section 994(p) of Title 28 and in accordance with this subsection, the United States Sentencing Commission shall amend Sentencing Guideline, Section 2D1.12, and, as appropriate, its commentary, to include a 2 level enhancement, consistent with the current enhancement for methamphetamine, when a defendant (A) intended to manufacture fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide), analogues of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide), or fentanyl-related substances, or (B) knew, believed, or had reasonable cause to believe that prohibited flask, equipment, chemical, product, or material was to be used to manufacture fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide), analogues of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide), or fentanyl-related substances. The United States Sentencing Commission shall also amend Sentencing Guideline, Section 2D1.12, and, as appropriate, its commentary, to provide for a higher offense level if the violation of section 843(a)(5), (6), or (7) involves more than 1,000 kilograms of a chemical, product, or material or more than 100 tableting or encapsulating machines.

Text (Enhanced Penalties for Key Items Used in the Counterfeiting of Drugs (21 U.S.C. §§ 331, 333)

SEC. xxx. INCREASING MAXIMUM PENALTIES FOR MANUFACTURING AND DISTRIBUTING OF MATERIALS USED TO MANUFACTURE COUNTERFEIT PILLS.

(a) Title 21, United States Code, Section 333, is amended by inserting the following at the end of subsection (b):

"(9) Notwithstanding subsection (a), any person who violates section 331(i)(2) of this title by making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing, knowing the punch, die, plate, stone, or other thing is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof, shall be imprisoned for not more than 10 years or fined in accordance with Title 18, or both."

(b) Pursuant to its authority under section 994(p) of Title 28 and in accordance with this subsection, the United States Sentencing Commission shall promulgate a new guideline amendment applicable to persons convicted of an offense under section 331(i)(2) of Title 21, who are convicted of the penalty under section 333(b)(9) of Title 21, and to persons convicted of an offense under section 331(i)(3) of Title 21 who are convicted of the penalty under section 333(b)(8) of Title 21with a Base Offense Level of at least 14 for offenses involving a controlled substance and a cross-reference to the drug quantity tables in Sentencing Guideline, Section 2D1.1, if it produces an offense level over 14; enhancements based on the number of punches, dies, plates, stones, or other devices present; and any other enhancements the United States Sentencing Commission deems appropriate.

Text (Sentencing Enhancements – Fake Pills)

SEC. xxx. SENTENCING GUIDELINES AMENDMENT.

DISTRIBUTION OF FAKE PILLS LACED WITH FENTANYL – Notwithstanding the Sentencing Commission's 2023 Amendments to the Sentencing Guidelines, Section 2D1.1(b) is amended by striking subsection (13) in its entirety and inserting the following language:

"(13) If (A) the defendant knowingly misrepresented or knowingly marketed as another substance a mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, increase by 4 levels; or (B) If the offense involved an illicitly-manufactured substance that would appear, to a reasonable person, to be legitimately manufactured, or that the defendant represented or marketed as legitimately manufactured, but was in fact a mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4- piperidinyl] propanamide), a fentanyl analogue, or a synthetic opioid, increase by 4 levels, unless the defendant establishes by a preponderance of the evidence that the defendant did not know, and had no reason to believe, that the substance contained fentanyl, a fentanyl analogue, or a synthetic opioid."

Text (Sentencing Enhancements – Minors, Online Platforms, Xylazine, Death and Serious Bodily Injury, Firearms)

SEC. xxx. SENTENCING GUIDELINES AMENDMENT.

FENTANYL SENTENCING ENHANCEMENTS– Notwithstanding the Sentencing Commission's 2023 Amendments to the Sentencing Guidelines, Section 2D1.1 is amended

(1) by striking section (a) it in its entirety and inserting the following language:

"(a) Base Offense Level (Apply the greatest):

(1) 43, if—

(A) the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), or (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), or (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a serious drug felony or serious violent felony; or

(B) the defendant is convicted under 21 U.S.C. § 841(b)(1)(C) or 21 U.S.C. § 960(b)(3) and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a felony drug offense; or

(2) 41, if—

(A) the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), or (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), or (b)(2), or (b)(3), the offense of conviction establishes that the defendant committed the offense after one or more prior convictions for a serious drug felony or serious violent felony, and death or serious bodily injury resulted from the use of the substance; or

(B) the defendant is convicted under 21 U.S.C. § 841(b)(1)(C) or 21 U.S.C. § 960(b)(3), the offense of conviction establishes that the defendant committed the offense after one or more prior convictions for a felony drug offense, and death or serious bodily injury resulted from the use of the substance; or

(3) 38, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

(4) 36, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and death or serious bodily injury resulted from the use of the substance; or

(5) 30, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a felony drug offense; or

(6) 28, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), the offense of conviction establishes that the defendant committed the offense after one or more prior convictions for a felony drug offense, and death or serious bodily injury resulted from the use of the substance; or

(7) 26, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

(8) 24, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and death or serious bodily injury resulted from the use of the substance; or

(9) the offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii) level 38, decrease by 4 levels. If the resulting offense level is greater than level 32 and the defendant receives the 4-level ("minimal participant") reduction in §3B1.2(a), decrease to level 32."

(2) by striking subsection (b)(1) it in its entirety and inserting the following language:

"(1) If (A) a dangerous weapon (including a firearm) was possessed, increase by 2 levels; or if (B) three or more firearms were possessed, a semiautomatic firearm capable of accepting a large capacity magazine was possessed, or a firearm as described in 26 U.S.C. § 5845 was possessed, increase by 4 levels."

(3) by striking subsection (b)(7) it in its entirety and inserting the following language:

"(7) If (A) the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a controlled substance by means of an interactive computer service, through either mass-marketing by use of a function that provides online direct messaging or another similar function on a social media site, computer application or other similar platform, , increase by 2 levels; and (B) If anonymizing technology was used, increase by an additional 2 levels. For the purposes of this provision, "anonymizing technology" includes any program, function or other mechanism that permits individuals to hide or alter a user's name or IP address, or otherwise serves to prevent others from identifying the actual identity of the individual. The use of a false name alone does not constitute use of anonymizing technology.

(4) by striking from subsection (b)(16)(B) it in its entirety and inserting the following language:

"(B) the defendant, knowing that an individual was (i) 65 or more years of age, (ii) pregnant, or (iii) unusually vulnerable due to physical or mental condition or otherwise particularly susceptible to the criminal conduct, distributed a controlled substance to that individual or involved that individual in the offense;

(5) by inserting, at the end of subsection (b)(18), the following:

"(19) If the defendant, knowing that an individual was less than 21 years of age, distributed a controlled substance to that individual or involved that individual in the offense, increase by 4 levels.

(20) If the offense involved fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) mixed with xylazine, a fentanyl analogue mixed with xylazine, or a fentanyl related substance mixed with xylazine, increase by 4 levels."

Text (Clarifying the Fentanyl Analogue Definition (21 U.S.C. § 802)

SEC. xxx. CLARIFYING PENALTIES FOR OFFENSES INVOLVING FENTANYL, FENTANYL-RELATED SUBSTANCES, AND FENTANYL ANALOGUES.

(a) Title 21, United States Code, Section 802, is amended by inserting a new subparagraph (XX) as follows:

"(XX) The term 'analogue of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide)' means any substance that is structurally similar to fentanyl that has been individually included on Schedule I or II of part B of this subchapter or individually controlled by action of the Attorney General. It does not include any fentanyl-related substances that have not been individually scheduled."

(b) Title 21, United States Code, Section 841, is amended:

(1) By striking subparagraph (b)(1)(A)(vi) and inserting in its place "(vi) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide) or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide)";

(2) By striking subparagraph (b)(1)(B)(vi) and inserting in its place "(vi) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide) or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide)";

(c) Title 21, United State Code, Section 960, is amended:

(1) By striking subparagraph (b)(1)(F) and inserting in its place "(F) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide) or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide)";

(2) By striking subparagraph (b)(2)(F) and inserting in its place "(F) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide) or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of fentanyl (N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide)";

(d) Rule of Construction. The forgoing amendments to 21 U.S.C. § 841(b)(1)(A)(vi), § 841(b)(1)(B)(vi), § 960(b)(1)(F), and § 960(b)(2)(F) add the common name for fentanyl to the text of these provisions but do not change the scope of the statute in any way.

Proposal 9: Ensure that Illicit Drug Traffickers Can be Held to Account

Background: These provisions would give the Department of Justice additional tools to bring drug traffickers to justice. In particular, these provisions will allow prosecutors to bring money laundering charges against drug traffickers who have violated certain drug trafficking-related sanctions; make those who manufacture or distribute precursor chemicals and related equipment with the intent or knowledge that they will be used to manufacture illicit drugs imported into the United States accountable for their acts; and make clear that anyone who knows or intends to distribute controlled substance analogues—which are unscheduled substances that are similar to, and often as deadly as, scheduled controlled substances—should be held liable for their acts.

Text (Kingpin Act Violations as Money Laundering Predicates (18 U.S.C. § 1956)

SEC. xxx. AMENDING THE KINGPIN DESIGNATION ACT.

Title 18, United States Code, Section 1956(c)(7)(D), is amended by inserting "section 807 (relating to penalties) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. section 1906)," after "section 16 (relating to offenses and punishment) of the Trading with the Enemy Act,".

Text (Extraterritorial Jurisdiction Over Illicit Importers (21 U.S.C. § 959)

SEC. xxx. PROVIDING FOR EXTRATERRITORIAL JURISDICTION.

(a) Title 21, United States Code, Section 959 is amended as follows:

(1) By adding, after subsection (b), the following:

"(c) Manufacture or distribution of any materials for the purpose of manufacturing a controlled substance. It shall be unlawful for any person to manufacture or distribute a tableting machine, encapsulating machine, gelatin capsule, or any equipment, chemical, product, or material—

(1) intending or knowing that it will be used to manufacture a controlled substance; and

(2) intending, knowing, or having reasonable cause to believe that the controlled substance will be unlawfully imported into the United States."

(2) By redesignating subsection (c) as subsection (d), and subsection (d) as subsection (e)

(b) Title 21, United States Code, Section 960(d) is amended as follows:

(1) At the end of paragraph (6), by striking "or"

(2) At the end of paragraph (7), by striking "," and adding "; or"

(3) By inserting the following immediately after paragraph (7)

"(8) manufactures or distributes a tableting machine, encapsulating machine, gelatin capsule, or any equipment, chemical, product, or material in violation of paragraph (c) of section 959 of this title,"

(4) By adding "and" after "shall be fined in accordance with title 18,"

(4) By adding "; or not more than 10 years in the case of a violation of paragraph (7); not more than 8 years in the case of a violation of paragraph (8); or not more than 15 years in

the case of a violation of paragraph (7) or (8) involving more than 1,000 kilograms of a listed chemical, a chemical, product, or material, or more than 100 tableting machines or encapsulating machines;" after "a list I chemical"

(5) By striking "or"" after "or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1)," and adding "(7), or (8) subject to a different penalty as described in this subsection" after "(3)" and striking "involving a list I chemical, or both."

(c) United States Sentencing Commission. Pursuant to its authority under section 994(p) of Title 28 and in accordance with this subsection, the United States Sentencing Commission shall review and amend its guidelines and its policy statements providing for a higher offense level if the violation of section 959(b) involves more than 1,000 kilograms of a listed chemical or a violation of section 959(c) involves more than 1,000 kilograms of a chemical, product, or material or more than 100 tableting or encapsulating machines.

Text (Proof Necessary to Prosecute Analogue Cases (21 U.S.C. § 813)

SEC. xxx. CLARIFYING THE PROOF NECESSARY TO PROSECUTE CONTROLLED SUBSTANCE ANALOGUE CASES.

Title 21, United States Code, Section 813 is amended by adding a new subsection (d) as follows:

"(d) A violation of this Act related to controlled substance analogues does not require the defendant to be aware of the chemical structure of the substance. The government must prove that the substance was intended for human consumption and any of the following:

"(1) The defendant knew or believed that the substance was controlled by federal drugs laws or was otherwise unlawful; or

"(2) The defendant knew or believed that the substance had a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

"(3) The defendant represented to another person that the substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II."