

Department of Justice
Proposals for Addressing Issues Created by the COVID-19 Pandemic

1. **Antitrust Enforcement:** Toll deadlines in antitrust merger review and criminal enforcement programs for short periods of time necessitated by the COVID-19 pandemic. Legislative proposals, including language and explanation, are attached at Tab A.
2. **Criminal and Civil Enforcement:** Three legislative proposals to address the statute of limitations and Speedy Trial Act issues. First, a new statutory provision to Title 28 to allow the chief judge, upon application of the AG, to delay or toll judicial proceedings, including statutes of limitations and Speedy Trial Act deadlines, when the court is closed or partially closed because of a natural disaster, civil disobedience, or other emergency situation. Second, a new statutory provision to Title 18, to allow the Chief Justice to suspend statute of limitations when the country is in a state of emergency. Third, an addition subsection to the Speedy Trial Act allowing for exclusion of time for any delay attributed to a national emergency resulting in suspension of statutes of limitations under the prior proposal or delay under the first proposal. The full legislative proposals, including language and explanation, are attached at Tab B.
3. **ATF Testing:** designate priority testing for federal agents and trainees at FLETC/Quantico. This would be similar to the response in Washington State where they set up provisions to directly contract with private labs to test first-responders. Ideally, the proposal may benefit from additional funding as well. Legislative proposals, including language and explanations, are attached at Tab C.
4. **USMS Authorities:** There are two proposals for additional USMS authorities. The first is a waiver of the annual cap for all personnel who may be involved in emergency operations this year. With intense emergency operations and a possible degradation of the workforce due to illness. It is probable that many USMS employees may reach the annual pay caps this year. The second is an Administration supported danger pay proposal for USMS personnel operating overseas. This legislation will give us the same authority that FBI and DEA already have to designate personnel for danger pay who operate overseas. The urgency of this proposal has intensified with COVID, as USMS personnel are now subject to additional risks when executing certain foreign extraditions. Legislative proposals, including language and explanations, are attached at Tab D.
5. **Federal Criminal and Civil Enforcement for US Attorneys:** This proposal would allow video teleconferencing for preliminary hearings (initial appearances, preliminary hearings, arraignments, and detention hearings). Legislative proposal, including language and explanation, is attached at Tab E.

6. **Executive Office for Immigration Review (EOIR):** EOIR has several proposals that address the impact of COVID-19 on their operations. These legislative proposals, including language and explanations, are attached at Tab F.

7. **DEA Authorities:** There are two legislative changes that would be helpful to DEA to access to the data that would assist in determining critical drug supplies and supporting our role in public health and safety. The legislative proposals, including language and explanation, are attached at Tab G.

Tab A: Antitrust Tolling Proposals

This proposal would include legislation to toll deadlines in the Antitrust Division's merger review and criminal enforcement programs for short periods of time necessitated by the COVID-19 pandemic. One proposal would allow designated officials to extend waiting periods in the civil premerger review program. The other would provide for tolling of the statute of limitations on criminal antitrust enforcement matters during the pandemic emergency period. Both legislative actions are necessary to enable the Division to balance pandemic-response needs with pre-existing statutory deadlines that do not account for today's exigent circumstances.

1. Hart-Scott-Rodino Act Amendment Proposal

The pandemic may render the Division unable to timely process premerger notifications within the statutory 15-day and 30-day deadlines, and legislation is necessary to enable it to extend those deadlines. The proposed amendment would authorize the Assistant Attorney General for Antitrust (the "Assistant Attorney General") and the Federal Trade Commission (the "FTC"), represented by the Chairman of the FTC (the "Chairman"), when acting jointly, to toll all premerger waiting periods for a fixed period in response to a natural disaster, pandemic, lapse in appropriations, or other force majeure. The proposal and its rationale are discussed in further detail below.

The Hart-Scott-Rodino Act ("HSR Act") (15 USC § 18a) was enacted in 1976 and reformed in 2000. For transactions that meet overall size thresholds and certain other requirements, the HSR Act and its implementing regulations create a premerger notification program. Under this program, parties to the transaction are required to file a notification and report form (the "HSR Notification") with the Division and the FTC (collectively, the "Agencies"), and then wait 15 or 30 days while the Agencies assess the transaction and decide whether to request more information.

Prior to the HSR Act, parties could, and often did, consummate transactions that raised significant antitrust concerns before the Agencies had an opportunity to consider the competitive effects of those transactions. This created significant consumer harm and made remedying unlawful transactions difficult. By requiring merger reporting before consummation, the HSR Act therefore supports Agencies' ability to obtain timely, effective relief to prevent anticompetitive effects.

In fiscal year 2018, 2,111 transactions were reported under the HSR Act. Each of the HSR Notifications associated with these 2,111 transactions was reviewed by the Agencies' staff. Following this review, where necessary, the Agencies opened investigations to further ascertain whether a subset of transactions were likely harm consumers. This review and investigation requires considerable time and manpower for the Agencies and for private parties, requiring that they have staffing on-hand and capable of accessing, exchanging, and assessing large quantities of information about significant merger transactions.

At the same time, the HSR Act has waiting periods in order to minimize the impediment to and burden on private transactions. Once the applicable waiting period lapses, unless the Agencies take further action the parties are legally permitted to consummate their transaction.

As written, the HSR Act does not provide a means by which the Agencies can extend the statutory waiting periods in response to a natural disaster, pandemic, lapse in appropriations, or other force majeure.

Tab A: Antitrust Tolling Proposals

As detailed above, the Agencies need adequate time and resources to be able to fulfill the congressional intent and purpose behind the HSR Act, namely the pre-consummation review and assessment of transactions with the potential to harm American consumers. In exigent circumstances such as a natural disaster, pandemic, lapse in appropriations, or other force majeure, the ability of the Agencies to conduct such review and assessment can be materially inhibited. This inhibition stems from the greatly reduced capability of the Agencies' staff to both obtain the information needed as well as to consult internally to form an informed opinion on the potential competitive harm (or lack thereof) of a given transaction. Circumstances may further inhibit the Agencies' reviews if access to or communication with third parties is limited. At the same time, the Agencies do not currently have the ability to toll the HSR waiting period for these purposes.

This proposed legislation would confer upon the Assistant Attorney General and the Chairman the ability to act jointly to toll the HSR waiting period in the event of a natural disaster, pandemic, lapse in appropriations, or other force majeure. This measure would preserve the effectiveness of the premerger review program and thus support the Department's efforts to protect competition in the U.S. economy.

The proposed measure is consistent to similar recent amendments to the Foreign Investment Risk Review Modernization Act of 2018 ("FIRRMA"). Applying to a similar transaction-specific review regime that pertains to national security conducted by the Committee on Foreign Investment in the United States ("CFIUS"), FIRRMA added a provision that tolled all deadlines and time limitations in CFIUS reviews during lapses in government appropriations. The proposed legislation supported by the Division differs from the FIRRMA approach in that it authorizes tolling only for a fixed period. This fixed period provides a greater level of certainty to parties as to when the HSR waiting period would resume, thus preserving, to the extent possible, parties' economic freedom.

Proposed Legislative Language

Section 1. Purpose

It is the purpose of this Act to limit the disruption that pandemic response and other emergency measures have on the premerger notification regime of the antitrust laws.

Section 2. Premerger Notification

Section 605 of Public Law 101-162 ([15 U.S.C. 18a](#)) is amended—

(1) in subsection (b)(1)(B) by inserting “, (e)(3)” after “(e)(2)” and before “or (g)(2)” and

(2) in subsection (e) by adding at the end the following:

“(3) The Assistant Attorney General and the Chairman of the Federal Trade Commission, upon a good faith belief that the offices of the Department of Justice or the Federal Trade Commission may be significantly inhibited from receiving or reviewing notifications required under subsection

Tab A: Antitrust Tolling Proposals

(a) due to a natural disaster, pandemic, lapse in appropriations, or other force majeure, may jointly issue a tolling order. A tolling order shall be publicized through public announcement and, to the extent possible, notice to affected parties. A tolling order shall toll the waiting period required under subsection (b)(1) by fifteen days. A tolling order shall apply to all transactions for which a notification has been received and the waiting period has not expired and for any transactions for which a notification is received while the order, or such renewals, are in effect. A tolling order shall apply to all notifications required under subsection (a), although terminations of the waiting period pursuant to subsection (b)(2) shall continue to be permitted. A tolling order may be revoked early, or renewed as many times as necessary, by joint statement of the Assistant Attorney General and the Chairman of the Federal Trade Commission.”

2. Tolling the Statute of Limitations for Criminal Antitrust Violations

COVID-19 and measures taken to prevent its transmission risk disrupting effective criminal law enforcement by, among other things, hindering investigations, making witnesses unavailable, and delaying or suspending the operation of grand juries. These disruptions may not just delay ongoing investigations, but also effectively curtail these investigations and preclude the prosecution of criminal antitrust offenses due to the running of the statute of limitations.

The Antitrust Division is committed to antitrust enforcement against cartels and collusion. These are some of the most egregious antitrust violations—price fixing, bid rigging, and customer and territorial allocation. Criminal prosecutions for Sherman Act offenses are subject to the generally applicable statute of limitations, 18 U.S.C. § 3282, which provides for a five-year statute of limitations. Some offenses have their own statute of limitations expressly provided by law. In the experience of Antitrust Division prosecutors who have prosecuted both antitrust crimes and crimes involving financial institutions, antitrust conspiracies are equally as complex as many of the offenses subject to the ten-year statute of limitations provided by 18 U.S.C. § 3293. Criminal antitrust conspiracies by definition always involve more than one company. These companies are often multinational companies with employees and evidence located around the globe. Antitrust conspiracies often last for long periods of time and can be very secretive and hard to detect, particularly without insider evidence. Antitrust cases are also very document intensive, like other white-collar crimes enumerated in 18 U.S.C. § 3293.

Legislative action is necessary to prevent disruptions related to the coronavirus from irreparably impairing the investigation and prosecution of criminal offenses by suspending the statute of limitations for offenses until that risk has passed and the usual operation of courts, the government, and businesses has returned.

Proposed Legislative Language

Section 1. Findings. On March 13, 2020, the President of the United States, acting under 50 U.S.C. § 1621, declared a national emergency (hereafter “the national emergency”) in connection with the novel coronavirus, “SARS-CoV-2,” which causes the disease COVID-19.

Tab A: Antitrust Tolling Proposals

Section 2. Purpose. SARS-CoV-2 and measures taken to prevent its transmission risk disrupting effective criminal antitrust law enforcement by, among other things, hindering investigations, making witnesses unavailable, and delaying or suspending the operation of grand juries. It is the purpose of this act to prevent these disruptions from irreparably impairing the investigation and prosecution of criminal antitrust offenses by suspending the statute of limitations for offenses until that risk has passed.

Section 3. The running of the statute of limitations applicable to any offense arising under sections 1, 2, and 3, of Title 15 shall be suspended from the date of enactment until the later of 180 days from the date of enactment, or 60 days after the termination of the national emergency pursuant to 50 U.S.C. § 1622.

Tab B – Criminal and Civil Provisions - Updated

SEC. 1. EMERGENCY AUTHORITY TO DELAY OR TOLL JUDICIAL PROCEEDINGS.

(a) IN GENERAL -- Chapter 111 of title 28, United States Code, is amended by adding at the end the following:

§ 1660. Emergency Authority to Delay, or Toll Judicial Proceedings.

“(a) IN GENERAL -- Upon application of the Attorney General or the Attorney General’s designee or on his own motion, the chief judge of any trial court of the United States that has been affected (or, if the chief judge is unavailable, the most senior available active judge of that court or the chief judge or circuit Justice of the court of appeals that includes that court) may, in the event of a natural disaster, civil disobedience, or other emergency situation requiring the full or partial closure of courts or other circumstances inhibiting the ability of litigants to comply with deadlines imposed by statutes or by the rules of procedure applicable in the courts of the United States, enter such order or orders as may be appropriate to delay, toll, or otherwise grant relief from time deadlines imposed by otherwise applicable statutes and rules of procedure for such period and in such judicial district as may be appropriate, including, without limitation: otherwise applicable statutes of limitation; the Speedy Trial Act, 18 U.S.C. 3161; any statutes or rules of procedure otherwise affecting pre-arrest, post-arrest, pre-trial, trial, and post-trial procedures in criminal and juvenile proceedings and all civil process and proceedings, including [the time for commencing actions brought by the United States pursuant to 28 USC 2415 and 28 USC 2462](#); and the filing of notices of appeal.

“(b) CRIMINAL CASES AND CIVIL ENFORCEMENT ACTIONS -- In setting new time limits under this section for criminal cases and civil enforcement actions brought by the government, the court shall consider the government’s ability to investigate, litigate and process defendants during and beyond the emergency situation.

“(c) APPEALS -- Upon application of the Attorney General or the Attorney General’s designee or on his own motion, the chief judge of a court of appeals that has been affected or that includes any trial court of the United States so affected (or, if the chief circuit judge is unavailable, the most senior available active circuit judge or the circuit Justice) may, in the event of a natural disaster, civil disobedience, or other emergency situation requiring the full or partial closure of courts or other circumstances inhibiting the ability of litigants to comply with deadlines imposed by statutes or by the rules of procedure applicable in the courts of the United States, enter such order or orders as may be appropriate to delay, toll, or otherwise grant relief from time deadlines imposed by otherwise applicable statutes and rules of procedure governing appellate proceedings in such circuit for such period as may be appropriate.

“(d) Nothing in this section shall be construed to limit the inherent authority of a federal court to manage legal proceedings before it.”

Tab B – Criminal and Civil Provisions - Updated

(b) CLERICAL AMENDMENT.----The table of sections at the beginning of Chapter 111 of title 28, United States Code, is amended by adding at the end the following new item:

“§ 1660. Emergency Authority to Delay or Toll Judicial Proceedings.”.

EXPLANATION

The new section 1660 of title 28 allows the chief judge of any district court (or, if the chief district judge is not available, the next most senior active district judge in the district or the chief judge or circuit Justice of the court of appeals for the circuit in which the district is located), either on motion of the Attorney General or his designee or on the court’s own motion, to enter an order or orders to delay or toll any and all deadlines imposed by statute or rules of procedure whenever the district court is fully or partially closed by virtue of any natural disaster, civil disobedience, or other emergency situation. While individual judges currently possess this authority, this provision would enable the chief judge of an affected district to ensure that all judges within that district address issues involving time limits in a consistent manner.

Subsection (b) of the new section 1660 would make clear that, in setting new time limits applicable in criminal cases, the court must consider the government’s ability to investigate, litigate and process defendants during and beyond the emergency situation. While the court can be expected to give consideration to the difficulties faced by all litigants in such cases, the law is designed to ensure that the court also give appropriate consideration to the unique needs that may be imposed on the federal government in responding to the types of emergencies that could result in the need to seek to invoke the authority provided in section 1660.

The new section would provide like authority to the chief judge of the court of appeals for the circuit when the court of appeals itself is so affected. Such authority may also be exercised by the chief judge of the court of appeals to delay or toll time limits for appellate litigants within specific districts in the circuit when emergency situations affect litigants in that district.

Tab B – Criminal and Civil Provisions - Updated

SEC. 2. SUSPENSION OF STATUTE OF LIMITATIONS PURSUANT TO STATE OF EMERGENCY.

Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

§ 3302. Emergency Suspension of Limitations

Notwithstanding any provision to the contrary, when the United States is in a state of national emergency, as described in 50 U.S.C. 1621, and upon a finding by the Chief Justice of the United States that emergency conditions will materially affect the functioning of the federal courts, the statute of limitations applicable to any offense over which federal district courts have jurisdiction pursuant to 18 U.S.C. 3231 or civil action over which any court of the United States has jurisdiction pursuant to 28 USC 2415 or 28 USC 2462 shall be tolled during the period of the national emergency and for one year following the end of the national emergency. Nothing in this section shall be construed to limit the authority of a federal court to further delay or toll statutes of limitation pursuant to 28 U.S.C. 1660.

EXPLANATION

The new section 3302 of title 18, United States Code, would suspend the statute of limitations for all federal offenses during a period of nationwide emergency if the Chief Justice determines that the emergency will materially affect the functioning of the federal courts.

This provision does not apply to any cases in which the statute of limitations expired prior to its enactment and cannot be relied upon to revive any such prosecution.

Tab B – Criminal and Civil Provisions - Updated

SEC. 3. SPEEDY TRIAL

Section 3161 of title 18, United States Code, is amended in subsection (h) by inserting after paragraph (8) the following:

- (9) Any period of delay attributable to a national emergency that results in the suspension of statutes of limitation pursuant to 18 U.S.C. 3302.
- (10) Any period of delay authorized by a federal court pursuant to 28 U.S.C. 1660.

EXPLANATION

This amendment to Section 3161 of title 18, United States Code, would provide for automatic exclusions of time under the Speedy Trial Act for any period of delay attributable to a national emergency that results in a suspension of statutes of limitations under 18 U.S.C. § 3302 and for any period of delay that is attributable to an order issued pursuant to 28 U.S.C. § 1660(a).

Tab C: ATF Testing Authorities

SEC. XXX. COVERAGE OF TESTING FOR COVID-19 FOR ESSENTIAL FEDERAL LAW ENFORCEMENT PERSONNEL

IN GENERAL. — The Department of Health and Human Services (HHS) shall prioritize distribution of COVID-19 test-kits to Special Agents and Deputy United States Marshals in the law enforcement components of the Department of Justice (specifically, the Bureau of Alcohol, Tobacco, Firearms and Explosive, Drug Enforcement Administration, Federal Bureau of Investigation, and United States Marshal’s Service). Department of Justice law enforcement agencies have an immediate, priority need to test Special Agents and Deputy U.S. Marshals for COVID-19 to maintain mission effectiveness as these personnel must respond to critical public safety incidents, including enforcement of quarantine orders issued by HHS.

Tab D: USMS Proposals in Response to COVID-19

Danger Pay

Proposal:

Section 219: Section 151 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101-246 (5 U.S.C. 5928 note)), is amended by: (a) striking “or” after “Drug Enforcement Administration” and inserting “the”; and (b) inserting after “Federal Bureau of Investigation”: “, or the United States Marshals Service”.

Explanation:

- The Department requests that Congress grant the US Marshals Service the same authority that the FBI and the DEA have to provide danger pay for employees assigned to foreign posts where the duties to be performed in those locations pose a threat to the safety of the employees.
 - Under current law, the State Department identifies foreign locations for which government agencies are authorized to pay their employees a danger pay allowance, *i.e.*, a percentage of their regular pay, not to exceed 35% of the basic pay of the employee. The regions are identified on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. 5 U.S.C. § 5928.
 - Subsequent statutory language authorizes the DEA and the FBI to provide danger pay to employees in foreign areas that have not otherwise been deemed eligible by the State Department. These provisions recognize the unique danger posed to the employees based on the law enforcement nature of the duties they perform in those locations.
 - Section 151 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101-246) amended 5 U.S.C. § 5928 by adding: “The Secretary of State may not deny a request by the **Drug Enforcement Administration** to authorize a danger pay allowance (under section 5928 of title 5, United States Code) for any employee of such agency.”
 - Section 11005 of the 21st Century DOJ Appropriations Authorization Act (Public Law 107-273) further amended Section 151 of the Foreign Relations Authorization Act by inserting “or **Federal Bureau of Investigation**” after “Drug Enforcement Administration”.
 - In each instance where an allowance is initiated or terminated, the Secretary of State shall inform the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate of the action taken and the circumstances justifying it.
- The USMS currently has employees engaged in dangerous and difficult work in Mexico, Dominican Republic, Jamaica, and Colombia who would benefit from danger pay.
 - The USMS was authorized and funded to establish a permanent presence in Mexico, Jamaica, and the Dominican Republic in FY 2003 (P.L. 108-7), and Colombia in FY 2018 (P.L. 115-141).
 - USMS is engaged in supporting its missions abroad such as investigations involving violent fugitives and sex offenders under International Megan’s Law, and transnational criminal

Tab D: USMS Proposals in Response to COVID-19

organizations. Further, USMS provides technical and administrative expertise to foreign governments in accordance with US missions abroad.

- It can be difficult for USMS to recruit employees to leave their homes and take dangerous overseas assignments generally. A pay incentive would be helpful in recruiting qualified individuals for these positions. In addition, it can be harmful to morale to realize that, in taking these foreign assignments, the safety of USMS employees is valued less than that of their DOJ counterparts who are serving in the same locations, such as Mexico and Colombia.
- If granted this authority, the USMS does not require additional funding to implement it.

USMS Exception to the Limitation on Premium Pay

(a) DEFINITION.—In this section, the term “covered employee” means any Deputy U.S. Marshal employed by the United States Marshals Service who performs law enforcement duties by the United States Marshals Service.

(b) EXCEPTION TO THE LIMITATION ON PREMIUM PAY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, section 5547(a) of title 5, United States Code, shall not apply to any covered employee to the extent that its application would prevent a covered employee from receiving premium pay, as provided under the amendment made by paragraph (2).

(2) TECHNICAL AND CONFORMING AMENDMENT.— To be determined

(c) TREATMENT OF ADDITIONAL PAY.—If subsection (b) results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, that additional pay shall not—

- (1) be considered to be basic pay of the covered employee for any purpose; or
- (2) be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552 of title 5, United States Code.

(d) AGGREGATE LIMIT.—With respect to the application of section 5307 of title 5, United States Code, the payment of any additional premium pay to a covered employee as a result of subsection (b) shall not be counted as part of the aggregate compensation of the covered employee.

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect as if enacted on December 31, 2019.

Tab E: Federal Criminal and Civil Proposals for US Attorneys

Allowing Video Teleconferencing for Preliminary Proceedings:

Explanation:

One of the challenges created by coronavirus involves whether, when, and under what conditions to move inmates and defendants from one location to another. These challenges apply to preliminary federal criminal proceedings, such as initial appearances, arraignments, preliminary hearings, and detention hearings. Federal Rules of Criminal Procedure 5 and 10 provide a vehicle to address this challenge by allowing initial appearances and arraignments to be held using video teleconferencing, provided the defendant consents. Authorizing the general use of teleconferencing for these preliminary proceedings would ensure that defendants are able to access courts shortly after their arrest. It also would limit any disruptions caused by the coronavirus.

Proposed Text:

Subsection (f) of Title 18, United States Code, Section 3142, is amended by adding the following text at the end: “Video teleconferencing may be used to conduct a hearing pursuant to this section.”

Federal Rule of Criminal Procedure 5(f) is amended by striking “if the defendant consents.”

Federal Rule of Criminal Procedure 5.1 is amended by adding the following paragraph (i): “Video teleconferencing may be used to conduct a hearing pursuant to this section.”

Federal Rule of Criminal Procedure 10(c) is amended by striking “if the defendant consents.”

Subsection (a) of Federal Rule of Criminal Procedure 32.1 is amended:

in subparagraph (1), by inserting after “magistrate judge” the following: “, except as provided in Rule 32.1(a)(7)”; and

by adding the following subparagraph (7): “Video teleconferencing may be used to conduct a hearing pursuant to Rule 32.1(a).”

Subsection (a) of Federal Rule of Criminal Procedure 43 is amended:

by inserting, after “Rule 5,” the following: “Rule 5.1,”;

by striking “or”; and

Tab E: Federal Criminal and Civil Proposals for US Attorneys

“by inserting, after “Rule 10”, the following: “, or Rule 32.1”

Relevant Text, Including Edits:

Fed. R. Crim. P. 5(f):

Video conferencing may be used to conduct an appearance under this rule ~~if the defendant consents.~~

Fed. R. Crim. P. 10(c):

Video conferencing may be used to arraign a defendant ~~if the defendant consents.~~

Fed. R. Crim. P. 32.1(a)(1):

A person held in custody for violating probation or supervised release must be taken without unnecessary delay before a magistrate judge, **except as provided in Rule 32.1(a)(7).**

Fed. R. Crim. P. 43:

Unless this rule, Rule 5, **Rule 5.1,** or Rule 10, **or Rule 32.1** provides otherwise, the defendant must be present at . . .

Tab F: EOIR Proposals

PUBLIC HEALTH INADMISSABILITY

SEC. 1182. 1182. Inadmissible aliens

(a) IN GENERAL -- Chapter 12 of title 8, United States Code, is amended in subsection (a)(1)(A)(i) by inserting the following:

§ 1182 (a)(1)A(i). Classes of aliens ineligible for visas or admission

(A) In general-- Any alien—

- (i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with coronavirus, COVID-19, or SARS-CoV-2 or any disease associated therewith;

SEC. 1158. ASYLUM

Chapter 12 of title 8, United States Code, is amended in subsection (a)(2) by inserting after paragraph (E) the following:

§ 1158 (a)(2) AUTHORITY TO APPLY FOR ASYLUM

(F) Paragraph (1) shall not apply to an alien if the Secretary of Homeland Security or the Attorney General determines that the alien—

- (i) is infected with a communicable disease of public health significance, which shall include infection with coronavirus, COVID-19, or SARS-CoV-2 or any disease associated therewith or
- (ii) is subject to a presidential proclamation suspending and limiting the entry of aliens into the United States.

SEC. 1231. Detention, release, and removal of aliens ordered removed

Section 1231 of title 8, United States Code, is amended in subsection (b)(3)(B) by inserting after paragraph (iv) the following:

Tab F: EOIR Proposals

(v) (I) the alien is infected with a communicable disease of public health significance, which shall include infection with coronavirus, COVID-19, or SARS-CoV-2 or any disease associated therewith, or
(II) the alien is subject to a presidential proclamation suspending and limiting the entry of aliens into the United States.

SEC. 2242. EXCLUSION OF CERTAIN ALIENS

In Division G (Foreign Affairs Reform and Restructuring Act of 1998), section 2242(c) of Pub. L. 105-227 (8 USC 1231, note), adding the following language:

(c) EXCLUSION OF CERTAIN ALIENS.—To the maximum extent consistent with the obligations of the United States under the Convention, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, the regulations described in subsection (b) shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)). Aliens infected with a communicable disease of public health significance, which shall include infection with coronavirus, COVID-19, or SARS-CoV-2 or any disease associated therewith or aliens subject to a presidential proclamation suspending and limiting the entry of aliens into the United States shall not be eligible for protection under the Convention.

Legislative Recommendations to Ensure an Adequate Drug Supply Throughout the United States

I. ARCOS Expansion

To further protect the drug supply, DEA is flagging statutory limitations to ARCOS requirements in the CSA that leaves a significant gap in DEA’s ability to monitor the flow of controlled substances delivered across the United States and ensure that there are no drug shortages. Currently, manufacturers and distributors are required to report the sale of only Schedule I, Schedule II, and some Schedule III narcotics to DEA. During crises like the one our country currently faces, reporting on all controlled substances would improve DEA’s to have visibility over all prescribed drugs to ensure Americans have access to the drugs they need. For example, one drug that is currently not to be reported to the DEA is tramadol, a highly effective pain reliever that is commonly prescribed throughout the country. However, because it is a Schedule IV drug, DEA has no visibility of its availability.

Additionally, manufacturers and distributors are only required to report to ARCOS quarterly. In this ongoing crisis, where time is of the essence, we request a 30-day mandatory reporting period.

Expanding the requirement to report all prescription drugs combined with a shorter reporting schedule for manufacturers and distributors will allow DEA to ensure the U.S. has an adequate drug supply and take immediate action to repair supply and demand issues immediately, especially during this time of national emergency.

21 U.S.C. § 827(d)(1): (d) Periodic reports to Attorney General

(1) Every person registered under section 823 of this title shall, no less frequently than monthly and in such form as the Attorney General may require, make reports in electronic format to the Attorney General of every sale, delivery or other disposal (other than by dispensing by a practitioner) by him of any controlled substance, identifying by the registration number assigned under this subchapter the person or establishment (unless exempt from registration under section 822(d) of this title) to whom such sale, delivery, or other disposal was made.

Note: Any other changes necessary throughout Title 21 U.S.C. and Title 21 C.F.R. would need to be identified in order to conform with this change.

It is understandable that monthly reporting from all registrants (i.e. transfers from pharmacy to pharmacy) may be too expansive. However, the statutory limitation in 21 U.S.C. § 827(d)(1) of reporting pertaining to “narcotics” only could be rectified by removing the word “narcotic” and replace it with the word “all” in 21 U.S.C. § 827(d)(1). This small change would provide the Diversion control division a more robust picture of the closed loop of distribution, allowing us to better serve our role in public health and safety.

Tab G: DEA Authorities in Response to COVID-19

II. PDMP Data

Currently, 49 states have operational prescription drug monitoring programs (PDMPs) that collect details about every prescription in their state. This gathered data includes: name, quantity, and strength of the drug prescribed; details about the doctor who wrote the prescription; and the pharmacy that filled the prescription. None of this critical information is required to be shared with DEA; in fact, if DEA seeks this information in the course of an investigation, it must subpoenaed.

This lack of data sharing causes a significant gap of information for DEA, as currently our agency is only able to track controlled substances from manufacturer to pharmacies, and is at a distinct disadvantage of ensuring an adequate drug supply and stop illicit diversion of controlled substances. This data gap also makes it difficult for the DEA to accurately set the nation's drug quota each year. Ultimately, the DEA has an incomplete view of the licit drug distribution system it is charged by Congress to oversee.

However, under the new statutory requirements of the SUPPORT Act, DEA is now charged with taking into account the amount of diversion of five specific substances (oxycodone, hydrocodone, oxycodone, hydromorphone, and fentanyl). DEA intelligence shows that diversion of prescription drugs most frequently takes place at the prescriber, dispenser, and patient level, which is captured in PDMP at the state level but is not readily available to the DEA. DEA recommends providing states with grants to support "patient-encrypted PDMP data sharing." These grants would allow for states to easily share critical information with DEA, greatly improving the agency's ability to ensure an adequate drug supply for medical, scientific, and research purposes. It will also allow DEA to fulfill its new statutory obligations by providing a complete picture of the distribution process of controlled substances.

Note: Currently, DEA is in an awkward position of potentially relying on its broad authority as the regulator/approver of registrants and controlled substances to threaten states or to use 21 USC 876 subpoena authority. 876 subpoenas are somewhat controversial generally depending on your view of federal authority and especially so the more you extrapolate from an individual target in a specific investigation (see recent OIG report). Obviously, if Congress required states to share that info, we would be in a much cleaner legal position moving forward.

Tab H: BOP Provisions for COVID-19 Response

Legislative Recommendations to Ensure an adequate drug supply throughout the United States: Bureau of Prisons (BOP)

- I. PPE and Test Kits - There should be prioritization for BOP to order and obtain personal protective equipment and test kits based on the density of our inmate population dense, high traffic, high volume, high turnover, and high security areas. The current inability to guarantee the purchase of infectious disease PPE and supplies now and moving forward is a vulnerability. BOP is currently competing and engaging the same landscape of vendors as all other federal agencies and private entities. BOP prioritization is currently subject to an individual manufacturer's specific recognition of BOP as a priority and subsequent allocation of their inventory to the BOP.

- II. Home confinement under Sec. 3624(c)(2) - BOP should have the discretion to expand use of home confinement pass our current limitations of 10% of the term of imprisonment or 6 months.