To extend the temporary order for fentanyl-related substances.

IN THE SENATE OF THE UNITED STATES

Mr. Booker introduced the following bill; which was read twice and referred to the Committee on  

A BILL

To extend the temporary order for fentanyl-related substances.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Temporary Emergency Scheduling and Testing of Fentanyl Analogues Act of 2022” or the “TEST Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) EVALUATION.—The term “evaluation” means a scientific and medical evaluation, as con-
ducted by the Secretary of Health and Human Serv-
ices at the request of the Attorney General, and the
recommendations as to whether such drug or other
substance should be so controlled or removed as a
controlled substance from the schedules pursuant to
section 201(b) of the Controlled Substances Act (21
U.S.C. 811(b)).

(2) FENTANYL-RELATED SUBSTANCE.—The
term “fentanyl-related substance” has the meaning
given the term in section 1308.11 of title 21, Code
of Federal Regulations.

SEC. 3. EXTENSION OF TEMPORARY ORDER FOR
FENTANYL-RELATED SUBSTANCES.
Section 2 of the Temporary Reauthorization and
Study of the Emergency Scheduling of Fentanyl Ana-
logues Act (Public Law 116–114; 134 Stat. 103) is
amended by striking “December 31, 2022” and inserting
“2 years after the date of enactment of the Temporary
Emergency Scheduling and Testing of Fentanyl Analogues
Act of 2022”.

SEC. 4. EVALUATION OF ENCOUNTERED FENTANYL-RE-
LATED SUBSTANCES.

(a) SYNTHETIC COMPOUND.—Not later than 1 year
after the date of enactment of this Act, for each fentanyl-
related substance that the Attorney General has encoun-
tered before the date of enactment of this Act, but not
yet conducted an evaluation, the Attorney General shall
create a synthetic compound of that substance and submit
the compound to the Secretary of Health and Human
Services in order to solicit a scientific and medical evalua-
tion of that compound from the Secretary.

(b) Deadline.—

(1) In general.—Except as provided in para-
graph (2), the Secretary of Health and Human
Services shall complete the requested scientific and
medical evaluation under subsection (a) not later
than 1 year after receiving the solicitation from the
Attorney General.

(2) Extension.—If the Attorney General is
unable to create a synthetic compound before the ex-
piration of the 1-year period described in paragraph

(A) the Attorney General shall—

(i) notify the Committee on the Judi-
iciary of the Senate and the Committee on
the Judiciary of the House of Representa-
tives of the delay and publish the notifica-
tion on a public website; and

(ii) complete the requirements under
subsection (a) not later than 180 days
after the expiration of the 1-year period.
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) Determination Resulting in Removal.—

“(1) In general.—If the Secretary determines, taking into consideration factors as set forth in paragraph (3), that a fentanyl-related substance has a potential for abuse that is less than the drugs or other substances in schedule V—

“(A) the Secretary shall submit to the Attorney General a scientific and medical evaluation of that fentanyl-related substance supporting that determination;

“(B) the Secretary shall submit any such evaluation and determination in writing and include the bases therefor;

“(C) the scientific and medical determination of the Secretary contained in such evaluation shall be binding on the Attorney General; and

“(D) not later than 90 days after receiving such evaluation and determination, the Attorney General shall issue an order removing such
fentanyl-related substance from the schedules under section 202.

“(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 that is less than the drugs or other substances in schedules I and II—

“(A) the Secretary shall submit to the Attorney General a scientific and medical evaluation of that fentanyl-related substance supporting that determination;

“(B) the Secretary shall submit any such evaluation and determination in writing and include the bases therefor;

“(C) the scientific and medical determination of the Secretary contained in such evaluation shall be binding on the Attorney General; and

“(D) not later than 90 days after receiving such evaluation, the Attorney General shall issue an order removing such fentanyl-related substance from schedule I and controlling such substance under schedule III, IV or V.

“(3) Evaluation factors.—
“(A) IN GENERAL.—In making a determination under paragraph (1) or (2), the Secretary—

“(i) shall consider—

“(I) the factor listed in paragraph (2) of subsection (c);

“(II) the factors listed in paragraphs (1), (3), and (6) of such subsection to the extent evidence exists with respect to such factors; and

“(III) any information submitted to the Secretary by the Attorney General for purposes of such determination; and

“(ii) may consider the factors listed in paragraphs (4), (5), and (7) of subsection (c) if the Secretary finds that evidence exists with respect to such factors.

“(B) CONSIDERATION OF SCIENTIFIC EVIDENCE OF PHARMACOLOGICAL EFFECT.—

“(i) IN GENERAL.—For the purposes of subparagraph (A)(i)(I), consideration by the Secretary of the results of an assessment consisting of the studies described in clause (ii) shall constitute consideration of
the factor listed in paragraph (2) of sub-
section (c) if—

“(I) each such study is per-
formed according to scientific methods
and protocols commonly accepted in
the scientific community; and

“(II) the Secretary determines
that such assessment is adequate for
such purposes.

“(ii) DESCRIBED STUDIES.—The
studies described in this clause are any of
the following:

“(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 ani-
mal behavioral studies that can dem-
onstrate whether the substance has
abuse-related drug effects consistent
with mu opioid agonist activity, such
as demonstrating similarity to the effects of morphine.

“(l) PREVIOUSLY ANALYZED FENTANYL-RELATED SUBSTANCES.—To the extent that the Drug Enforcement Administration or the Department of Health and Human Services has conducted any evaluation or analysis (even if such analysis is not an evaluation under this section) of any fentanyl-related substance before the date of the enactment of this subsection, the Attorney General shall publish the results and any other information related to the evaluation or analysis on a public website not later than 90 days after the date of enactment of this subsection.

“(m) FENTANYL-RELATED SUBSTANCES RESEARCH CAPACITY.—The Drug Enforcement Administration and Department of Health and Human Services shall hire, employ, or retain the staff, researchers, and other qualified individuals necessary to carry out the requirements of paragraphs (1) and (2) of subsection (k), including, if appropriate to fulfill those requirements, establishing a consortium of chemists and researchers who may be readily hired, employed, or retrained without a request for proposals.

“(n) EVALUATIONS OR STUDIES.—The Secretary may enter into contracts or other agreements to conduct
or support evaluations or studies of fentanyl-related substances.

“(o) **Registration Requirements for Research Applications.**—Registration requirements for the research of fentanyl-related substances shall be those applicable to schedule II substances pursuant to section 1301.13 of title 21, Code of Federal Regulations.

“(p) **Publication.**—The Secretary shall publish on a public website—

“(1) each evaluation conducted pursuant to an Attorney General solicitation within 60 days of the completion of the scientific and medical evaluation, even if such evaluation did not result in a descheduling or rescheduling determination; and

“(2) the results and any other information related to previously evaluated fentanyl-related services pursuant to subsection (l).

“(q) **Authorization of Appropriations.**—There is authorized to be appropriated to the Secretary $50,000,000 for fiscal years 2023 and 2024, to remain available until expended, for the evaluation fentanyl-related substances pursuant to section 3 of the Temporary Emergency Scheduling and Testing of Fentanyl Analogues Act of 2022.”.
SEC. 6. NOTIFICATION.

The Attorney General shall notify each individual who is the subject of a pending prosecution for, or has been convicted or sentenced for, an offense involving a fentanyl-related substance that is subsequently removed or rescheduled under paragraphs (1) and (2) of section 201(k) of the Controlled Substances Act, as added by section 5 of this Act, about the change in schedule designation not later than 90 days after the change, and provide information about the effect of the change on their prosecution, conviction, or sentence.