

Emerging Drug Threats Rapid Scheduling Act of 2026

Citation verification and drafting review of revision 2

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Review Memorandum: EDTRSA-2026, Revision 2

October 6, 2026 · Prepared for Collin B. George, CISSP

This memorandum reviews revision 2. Its findings were applied in revision 3. Two further findings from the adversarial review were applied in one revision 4 branch; a separate revision 4 branch carried a third-pass verification. Revision 5 merges both and is the current text.

Scope. Citation verification and drafting review of the discussion draft and cover memorandum, revision 2. Verification was conducted against the Office of the Law Revision Counsel, govinfo, the Federal Register, congress.gov, and the Supreme Court's published opinions.

Bottom line

Revision 2 corrected eight of the nine citation defects in revision 1. It introduced one regression, which is material because the cover memorandum states it as a verified correction: **21 U.S.C. 802(32) does contain a subparagraph (C)**, so the new analogue clause must be lettered (D), as revision 1 had it.

Eleven drafting defects remain. Four are disqualifying in their current form — Legislative Counsel will not process them as written — and are concentrated in Section 11, which revision 2 rewrote. The expanded Section 11 fixed the scope error correctly but introduced a dangling cross-reference to a subsection that does not exist, and is drafted as an instruction rather than an amendment.

Two statements in the cover memorandum overclaim what the bill text accomplishes. Both appear in the safeguards list, which is the part of the memorandum most likely to be read closely in markup.

Part I. Citation verification

Corrected in revision 2, verified accurate

ITEM	STATUS
New 802 paragraphs renumbered (61)–(64)	Correct. 802(60) is occupied by “fentanyl-related substance,” added by HALT Fentanyl Act § 6(c).
811(k) available	Correct. 811 runs through (j).
Schedule I subdivision (f) available	Correct. 812(c) schedule I runs (a)–(e); (e) was added by HALT.
STOP Act “as amended by section 8003”	Correct. Subparagraph (K) predated the STOP Act.
Import penalty pinpointed to 1010(b)(5)	Correct. 21 U.S.C. 960(b)(5) is the schedule III tier.
HALT research provisions cited individually	Correct, and the scope limitation in 823(n)(2) is accurately described.
<i>Learning Resources</i> by docket number	Correct approach. See caveat below.
H.R. 1266 sourced to congress.gov	Correct. Passed the House September 15, 2026; Senate Calendar No. 623.
7-OH status in the memorandum	Correct. Three related compounds are under temporary order; 7-OH itself remains at notice of intent.

Regression introduced in revision 2

21 U.S.C. 802(32) — the new clause must be (D), not (C).

Paragraph (32) contains three subparagraphs. Subparagraph (A) opens with the words “Except as provided in subparagraph (C),” which is itself conclusive. Subparagraph (B) addresses listed-chemical designation; subparagraph (C) is the exclusion list (controlled substances, approved NDAs, substances under an investigational-use exemption, and substances not intended for human consumption).

Revision 2 relettered the new clause from (D) to (C), which would displace the exclusion list. The cover memorandum compounds the error by stating, under “Corrections applied after citation verification,” that “the subsection has only (A) and (B).” Revert to (D) and strike that bullet.

Unverified and low-confidence

ITEM	ISSUE
“607 U.S. ____”	No U.S. Reports volume or page has been assigned. The volume number is an inference. Cite as <i>Learning Resources, Inc. v. Trump</i> , Nos. 24–1287 & 25–250 (U.S. Feb. 20, 2026) (slip op.).
Research-community opposition to SITSA	Documented opposition is from advocacy organizations, not research bodies. Revision 2 already softened this to “civil-liberties and research objections,” which is defensible, but do not sharpen it again without a source.
PRC nitazene announcement date	Class control effective July 1, 2025 is confirmed. The announcement date is reported inconsistently (June 6 vs. June 19, 2025). The findings do not depend on it; leave the announcement date out.
UK generic nitazene control	Confirmed, but uncited. Add S.I. 2024/1361 (Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2024, in force January 15, 2025) to the sources.
<i>United States v. Forbes</i>	Listed in sources but never cited in the body. If retained, note it was an as-applied holding; later courts confine it to its facts. Otherwise strike it.

One citation worth adding

FCC v. Consumers’ Research, 606 U.S. 656 (2025), reaffirmed the intelligible-principle test 6–3 and expressly declined to adopt a stricter standard. Revision 2 added it to the risk table, which is the single most useful change in the revision: it converts the nondelegation entry from an open question into a favorable citation. Consider moving it into the findings as well, since Section 4 is the provision it protects.

Part II. Drafting defects

Disqualifying as drafted

1. Section 11 has no subsection (c), but Section 11(b) conditions on one.

Subsections run (a), (b), (d), (e). Section 11(b) extends the expedited procedure to “any research conducted by a registrant described in subsection (c) of this section.” No subsection (c) exists; the drafting note reserves it for “the registrant categories the subcommittee elects to cover.”

An operative provision cannot condition eligibility on a reserved subsection. As drafted, Section 11(b) extends the procedure to no one, which means the bill’s research pathway is nonfunctional — the defect that killed SITSA. Either populate (c) now or redraft (b) to name the categories inline. The second is better for a discussion draft; a reserved subsection invites a markup fight over a list that does not yet exist.

2. Section 11(b) is not drafted as an amendment.

“Section 303(n)(2) of the Controlled Substances Act is amended to apply, with respect to [X], to any research conducted by [Y], without regard to whether...” states a desired result rather than a textual change. Legislative Counsel amends by striking and inserting.

Two clean paths. Amend 823(n)(2) by adding a subparagraph covering the provisional schedule and Section 7 peptides. Or — better — leave HALT alone and draft Section 11 as a free-standing application provision: “Section 303(n) of the Controlled Substances Act shall apply to research with a substance in the provisional schedule or a peptide controlled under section 7 of this Act, without regard to the limitations in paragraph (2) of that subsection.” Amending HALT twelve months after enactment draws attention the provision does not need.

3. Section 401A(e) labeling penalty does not connect.

Revision 2 routes the IUPAC labeling penalty through 402(a)(16), which is how the DASCA chain runs — but 21 U.S.C. 842(a)(16) makes it unlawful “to violate subsection (e) of section 825,” a fixed referent. Declaring that a violation of new 401A(e) “is a violation of section 402(a)(16)” leaves 842(a)(16)’s text unchanged and makes 401A(e) both the prohibition and a deemed violation of a different prohibition.

Fix: move the labeling requirement into 21 U.S.C. 825 as a new subsection (f), amend 842(a)(16) to read “subsection (e) or (f) of section 825,” and delete 401A(e). The penalty then flows through the existing chain without a deeming provision. This also places the requirement where a compliance officer would look for it.

4. Section 5(c)(5) RICO predicate is circular.

Section 5(c) deems provisional-schedule substances controlled substances “for purposes of ... section 1961 of title 18.” But 18 U.S.C. 1961(1)(D) predicates on offenses involving a controlled substance “as defined in section 102 of the Controlled Substances Act.” The deeming provision in this bill is not an amendment to 802(6), so the title 18 definitional cross-reference still resolves to the unamended CSA definition.

Section 5(d) flags conforming amendments to 802(6) as “to be supplied by the Office of the Legislative Counsel.” That is the right instinct but the wrong sequencing: the RICO and money-laundering predicates are load-bearing for the enforcement theory, and the cover memorandum’s authority table presents them as secured. Draft the 802(6) amendment as operative text in this revision.

Substantive, worth fixing before transmittal

5. Section 4(8) creates a forum-shopping incentive against the bill’s own safeguard.

New 811(k) carries judicial review. Existing 811(h) does not — 811(h)(6) bars it, and the bill does not amend it. Section 4(8) says (k) is “in addition to” (h) and (i). An agency choosing between two paths to the same outcome, one reviewable and one not, will take the unreviewable one whenever the facts permit.

Three options, in descending order of how well they hold up in markup: make (k) the exclusive route for class-wide or receptor-defined control; amend 811(h)(6) to permit review on the same terms as (k)(7); or leave the structure and accept that the review provision will be characterized as cosmetic. The first is the strongest and costs the least, since class-wide control under (h) has been attempted exactly once.

6. The “temporary” authority outlasts the existing temporary authority.

811(h) runs two years plus one. New 811(k) runs three plus one. The bill thus pairs an easier trigger (15 days, class-wide, receptor-defined) with a longer duration. That asymmetry is the first thing a hostile witness will raise, and the risk table does not address it. Either align to 2+1, or state in the findings why class-wide control needs the longer window — the transfer proceeding under 202A(e) is a real justification, but it has to be made.

7. Section 10(b) subpoena authority has no jurisdictional nexus.

The provision extends 21 U.S.C. 876 to “any investigation relating to ... research chemical marketing.” Under the 802(63) definition, research chemical marketing can describe conduct involving a wholly uncontrolled substance. As drafted this gives DEA administrative subpoena authority over substances outside the agency’s jurisdiction.

Add a nexus: “where the Attorney General has reason to believe the substance is a controlled substance, a controlled substance analogue, a novel synthetic opioid, a novel anabolic agent, or a substance in the provisional schedule.” Without it, this is the provision that draws the civil-liberties objection the memorandum claims to have pre-empted, and it is an easy amendment to accept.

8. Section 8(c)(1) scienter attaches to the wrong element.

“Knowingly to facilitate the distribution” modifies the facilitation, not the character of the substance. A marketplace that knowingly hosts a listing without knowing the substance is controlled is liable on the face of the text. The safe harbor mitigates exposure but does not supply the missing element, and the construction is inconsistent with the *McFadden* knowledge requirement the bill codifies elsewhere. Add: “knowing that the substance is a substance in the provisional schedule, a controlled substance, or a controlled substance analogue.”

9. Section 6(b) is in the wrong place.

The new clause states that a novel synthetic opioid may be controlled under 201(k), 202A, or 202(c) regardless of structural similarity. That is a statement about scheduling authority, placed inside the definition of “controlled substance analogue.” It reads as though the analogue definition were the obstacle to peptide control, when the operative authority is elsewhere.

Move it to 201(k)(6), where the class-definition rules already sit. Keeping Section 6 to the labeling inference also makes the section do one thing, which helps the section heading match the content.

10. The provisional schedule has no number, and some provisions key off schedule number.

Section 202A(c) applies schedule III requirements. But 21 U.S.C. 822(f)(2), which Section 11(a)(3) incorporates, turns on whether a researcher adds a substance “in the same or a higher-numbered schedule.” The provisional schedule sits outside I–V and has no number, so the provision cannot be applied as written.

Add to Section 202A: “For purposes of any provision of this title or title III that distinguishes among schedules by number, a substance in the provisional schedule shall be treated as a substance in schedule III.” That resolves this and any similar provision OLC finds in conforming.

11. Section 102(61)(A)’s carve-out partially defeats Section 7(a)(11).

The definition excludes substances “listed in schedule I or II on the date of enactment.” Section 7(a) lists ten peptides in schedule I on enactment. Section 7(a)(11) then controls any other peptide meeting the 102(61) definition. The named peptides are separately listed, so they remain controlled — but the carve-out’s interaction with the residual clause is ambiguous for close variants, which is precisely the population Section 7(a)(11) exists to reach.

Add to 102(61)(A): “other than a substance listed by reason of section 7 of the Emerging Drug Threats Rapid Scheduling Act of 2026.”

Minor

ITEM	NOTE
Section 11(d)(2)	Exempting reference-standard activity from “penalty” provisions outright would immunize diversion. Condition the exemption on the material actually being used for the stated purpose.
Section 13(c)	The sunset preserves orders in effect but not the extension authority in 201(k)(5). An order issued in year six could not be extended in year nine. Add the extension authority to the savings clause.
Section 8(d)	The new FDCA prohibited act needs a paragraph designation; 21 U.S.C. 331 runs well into three-letter designations. Leave the bracket but flag it for OLC.
Section 10(e)(2)	A three-year retention ceiling for U.S.-person information that is <i>not relevant</i> to any law enforcement or public health purpose is long by the standards of comparable AG guidelines. Expect markup pressure; consider one year.
Section 202A(c) and 401A(e)	Both impose labeling obligations. If defect 3 is fixed by moving the requirement to 825, the overlap resolves itself.

Part III. Two overclaims in the cover memorandum

“Judicial review of every emergency order, which current 811(h) and the 2014 steroid procedure in 811(i) both deny.”

The bill does not amend 811(h) or 811(i). Both still deny review. The accurate claim is review of every order under the *new* authority. As written the sentence invites the response that the agency will simply use the old authority — see defect 5. Rewrite to: “Judicial review of every order under the new authority. Existing 811(h) and 811(i) deny review; Section 4(8) should be narrowed so the new authority is the exclusive route for class-wide control.”

That version converts a vulnerability into a drafting commitment, which is a stronger position in a staff briefing than a claim that does not survive the first question.

The authority table presents the RICO and money-laundering predicates as secured.

They depend on the 802(6) conforming amendment that Section 5(d) defers. Either draft the amendment (defect 4) or mark the entry as contingent. A staffer who checks this will find the gap, and the cost of being caught on it exceeds the benefit of the stronger-sounding entry.

Part IV. Register

The revision-2 memorandum is 2,493 words against revision 1's 2,029, and the added material is mostly correction history. Three changes tighten it without losing substance.

Move the correction log out of the memorandum. “Corrections applied after citation verification” is drafting history. Staff reading a leave-behind do not need it, and one of its bullets is wrong. It belongs in a separate verification record — Part I of this memorandum serves that function.

Collapse the two tables. “What the bill does” and the agency-authority table cover the same provisions from different angles, and the overlap is roughly forty percent. One table keyed to gap → provision → effect, with the agency named in the effect column, carries the whole load. This is the single largest available cut.

Cut the hedging in the risk table. Entries currently run to four and five lines because they narrate the reasoning. “Likely survives” plus the controlling citation plus one clause on the residual exposure is enough. The assessment column should be readable at a glance, which is the only way a risk table earns its space.

Applied together these bring the memorandum to roughly 1,500 words with no loss of content. The revised version accompanies this review.

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