



COMMONWEALTH OF KENTUCKY
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March 31, 2025

The Honorable Kristi Noem
Secretary of Homeland Security
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

The Honorable Pete R. Flores
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229

Re: Pause the Entry Type 86 Test

Dear Secretary Noem and Commissioner Flores:

As attorneys general responsible for protecting the safety of our constituents, we are proud to partner with President Trump and this Administration to stop the flow of illicit deadly drugs into our country and our communities. Your focused efforts to secure the southern border are a critical step in this work. Unfortunately, however, traffickers and our foreign adversaries like China are constantly finding new ways to bring fentanyl and other poisons into our neighborhoods.

We write today to ask for your help in addressing a serious loophole that is currently being exploited by those who profit off the devastation of American lives.

In 1938, Congress enacted Section 321(a)(2)(C) of the Tariff Act of 1930 (codified as amended at 19 U.S.C. § 1321(a)(2)(C)) to authorize the Secretary of the Treasury to waive or reduce certain duties, fees, and other taxes. This exception was intended to avoid expense and inconvenience to the government disproportionate to the amount of revenue that would otherwise be collected on certain imported goods with a fair retail value in the country of shipment of \$1 or less. Over the years, Congress amended Section 321 several times, ultimately increasing the threshold to \$800 in 2015. This provision is commonly known as the “de minimis” exemption.¹

¹ Casey, Christopher A. “Imports and the Section 321 (De Minimis) Exemption: Origins, Evolution, and Use.” *Congressional Research Service*, 1 Jan. 2025, crsreports.congress.gov/product/pdf/R/R48380.

While the de minimis provision can support legitimate trade, recent data indicate a troubling increase in shipments utilizing a U.S. Customs and Border Protection (CBP) pilot program called Entry Type 86. CBP introduced this program for mass cargo carriers to enter goods regulated by partner government agencies. However, the pilot program’s use far exceeds its original scope. Entry Type 86 now accounts for 75% of all de minimis goods entering the United States, with shipments increasing from 153 million in 2015 to more than 1.2 billion in 2024.² Any surge of this magnitude requires further study, especially when it comes to potential challenges within our customs enforcement system. It raises serious concerns about the flood of deadly drugs coming into our country through this program, along with other issues including noncompliance, supply chain vulnerabilities, and the circumvention of duty and regulatory obligations.

Without diligent inspection, drug cartels and traffickers can abuse this system to bring fentanyl and other deadly drugs directly into our country. According to CBP data, some shippers have also exploited the streamlined processing of Entry Type 86 to bypass regulations and avoid duties, leading to compliance risks. In 2024, CBP suspended multiple customs brokers from participating in the program due to unacceptable compliance risks.³

We believe meaningful changes need to be made to address the de minimis issue. Efforts should focus on addressing significant sources of non-compliance and closing gaps to prevent illicit goods from entering our states. CBP’s own data illustrates that the Entry Type 86 pilot program is the most non-compliant of all U.S. entry methods.

We ask you to urgently address this issue and temporarily pause the Entry Type 86 test while not sacrificing the de minimis program for compliant U.S.-based carriers.

We as state attorneys general stand ready to work together with you to cut off all avenues for the entry of fentanyl and other potentially lethal drugs into our communities. The lives of those we all serve will be saved as a result.

Sincerely,



Russell Coleman
Kentucky Attorney General



Steve Marshall
Alabama Attorney General



Tim Griffin
Arkansas Attorney General

² E-Commerce | U.S. Customs and Border Protection, <https://www.cbp.gov/trade/basic-import-export/e-commerce>

³ Casey, Christopher A. “Imports and the Section 321 (De Minimis) Exemption: Origins, Evolution, and Use.” *Congressional Research Service*, 1 Jan. 2025, crsreports.congress.gov/product/pdf/R/R48380.



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