

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-193 }

END FENTANYL ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4460

TO REQUIRE THE COMMISSIONER OF U.S. CUSTOMS
AND BORDER PROTECTION TO REGULARLY REVIEW AND
UPDATE POLICIES AND MANUALS RELATED TO
INSPECTIONS AT PORTS OF ENTRY



NOVEMBER 14, 2022.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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NOVEMBER 14, 2022.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 4460]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4460) to require the Commissioner of U.S. Customs and Border Protection to regularly review and update policies and manuals related to inspections at ports of entry, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 4460, the *Eradicating Narcotic Drugs and Formulating Effective New Tools to Address National Yearly Losses of Life Act* or the END FENTANYL Act, requires the Commissioner of U.S. Customs and Border Protection (CBP) to review and update, as needed, the current policies and manuals for the Office of Field Operations (OFO) related to inspections at ports of entry at least every three years. In addition, shortly after making any updates, the CBP Commissioner is required to submit a report to Congress summarizing the policy changes.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Drug overdose deaths in the United States have increased in recent years with an estimated 107,622 overdose deaths occurring in 2021, according to the Centers for Disease Control and Prevention.¹ This epidemic has been exacerbated by the increase of synthetic opioids—including illicitly manufactured fentanyl—which have been involved in the majority of overdose deaths in recent years.²

The Department of Homeland Security (DHS) plays an important role in preventing illicit drugs from entering the United States. DHS's CBP is responsible for safeguarding the borders of the United States from illicit activity—such as drug smuggling—while facilitating legitimate trade and travel.³ Specifically, CBP's Office of Field Operations (OFO) is responsible for inspecting pedestrians, passengers, and cargo at the more than 320 air, land, and sea ports of entry.⁴ During its inspections and operations at ports of entry, OFO encounters and seizes drugs. Within CBP, OFO has the greatest number of drug seizures, with over 77,000 drug seizure events resulting in an estimated 734,000 pounds of seized drugs during fiscal year 2021.⁵

The Drug Enforcement Administration's National Drug Threat Assessment report notes that the most common drug smuggling method used by transnational criminal organizations is through U.S. ports of entry in concealed compartments in passenger vehicles or commingled with cargo on commercial vehicles.⁶ According to May 2022 testimony from CBP's OFO Executive Assistant Commissioner, while fentanyl is the most commonly seized illicit synthetic opioid, CBP has also seized 50 synthetic opioids not classified as fentanyl, demonstrating a trend of new and emerging drugs.⁷ CBP officers serve as the first line of defense to interdict illicit opioids and emerging drugs from entering the United States.⁸ In addition to drug smuggling, CBP also encounters a variety of other illicit activities at ports of entry, such as human smuggling, bulk currency smuggling, and weapons trafficking.⁹

While CBP has policies in place that govern its inspection processes, a 2019 U.S. Government Accountability Office (GAO) found that many of these policies specific to inspections at land ports of entry were not regularly updated. According to OFO guidance, policies are required to be updated at least once every three years.¹⁰

¹Centers for Disease Control and Prevention: *U.S. Overdose Deaths In 2021 Increased Half as Much as in 2020—But Are Still Up 15%* (May 11, 2022) (https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm).

²*Id.*

³U.S. Customs and Border Protection, Home Page (www.cbp.gov/about) (accessed Aug. 31, 2022).

⁴Government Accountability Office, *Border Security: CBP Could Improve How It Categorizes Drug Seizure Data and Evaluates Training* (GAO-22-104725) (May 2022).

⁵U.S. Customs and Border Protection, Drug Seizure Statistics (www.cbp.gov/newsroom/stats/drug-seizure-statistics) (accessed Aug. 31, 2022).

⁶Drug Enforcement Administration, *2020 National Drug Threat Assessment* (DEA-DCT-DIR-008-21) (Mar. 2021).

⁷U.S. House of Representatives Committee on Homeland Security, Subcommittee on Border Security, Facilitation and Operations, Testimony Submitted for the Record of Pete Flores, Executive Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, Department of Homeland Security, *Hearing on Examining DHS's Efforts to Combat the Opioid Epidemic*, 117th Cong. (May 18, 2022).

⁸*Id.*

⁹U.S. Customs and Border Protection, CBP Enforcement Statistics Fiscal Year 2022 (www.cbp.gov/newsroom/stats/cbp-enforcement-statistics) (accessed Aug. 31, 2022).

¹⁰Government Accountability Office, *Land Ports of Entry: CBP Should Update Policies and Enhance Analysis of Inspections* (GAO-19-658) (Aug. 2019).

However, GAO found that some had not been updated in 20 years and as a result, some OFO inspection policies did not reflect the current operating conditions, inspection processes, or technology at ports of entry.¹¹

S. 4460 addresses these findings by requiring that CBP reviews and updates, as needed, their OFO inspection policies for ports of entry at least every three years. By regularly reviewing and updating these policies, CBP will have greater assurance that its inspection practices are uniformly implemented across its ports of entry. CBP will also have assurance that its policies are current and responsive to tactics and techniques designed to disguise illicit activity, such as drug and human smuggling. In addition, S. 4460 requires CBP to report changes and updates to its inspection policies to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives.

III. LEGISLATIVE HISTORY

Senator Rick Scott (R-FL) introduced S. 4460, the END FENTANYL Act, on June 23, 2022, along with Senators Mike Braun (R-IN), Dianne Feinstein (D-CA), and Margaret Hassan (D-NH). Senator Jacky Rosen joined as a cosponsor on July 28, 2022.

The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 4460 at a business meeting on August 3, 2022. During the business meeting, a substitute amendment was offered by Senator Scott that clarified that the requirement for CBP to update its inspection policies at least once every three years applies to the CBP's active policies and made a change in terminology. The Scott Substitute Amendment was adopted by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Lankford, Romney, Scott, and Hawley present.

The Committee ordered the bill, as amended, reported favorably by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Lankford, Romney, Scott, and Hawley present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short titles

This section designates the name of the bill as the “Eradicating Narcotic Drugs and Formulating Effective New Tools to Address National Yearly Losses of Life Act” or the “END FENTANYL Act”.

Section 2. Ensuring timely updates to U.S. Customs and Border Protection Field Manuals

Subsection (a) requires that the Commissioner of CBP review and update current OFO policies and manuals for inspections at ports of entry at least once every three years. The review and update process is intended to ensure the uniform implementation of inspection practices across ports of entry so that OFO is able to effectively respond to changes in tactics and techniques designed to disguise illicit activity, such as drug and human smuggling.

¹¹*Id.*

Subsection (b) requires that the Commissioner of CBP submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives summarizing the changes described in subsection (a) shortly after making them.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 21, 2022.

Hon. GARY PETERS,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 4460, the END FENTANYL Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeremy Crimm.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 4460, END FENTANYL Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on August 3, 2022			
By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 4460 would require the U.S. Customs and Border Protection (CBP) to review at least once every three years its current policies and manuals related to inspections at ports of entry. The bill also would require CBP to submit a report to the Congress highlighting any changes implemented that result from such a review.

Based on information from CBP, CBO estimates that implementing S. 4460 would cost less than \$500,000 over the 2022–2027 period. Such spending would be subject to the availability of appropriated funds.

S. 4460 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeremy Crimm. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.

