

**Calendar No. 44**

118TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
118-16

END FENTANYL ACT

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R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 206

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



MAY 4, 2023.—Ordered to be printed

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

## R E P O R T

[To accompany S. 206]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 206) 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 without amendment and recommends that the bill do pass.

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### I. PURPOSE AND SUMMARY

S. 206, 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.<sup>1</sup>

## 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.<sup>2</sup> 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.<sup>3</sup>

The Department of Homeland Security (DHS) plays an important role in preventing illicit drugs from entering the United States. CBP is responsible for safeguarding the borders of the United States from illicit activity—such as drug smuggling—while facilitating legitimate trade and travel.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> According to May 2022 testimony from CBP OFO Executive Assistant Commissioner Pete Flores, 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.<sup>8</sup> CBP officers serve as the first line of defense to interdict illicit opioids and emerging drugs from entering the United States.<sup>9</sup> 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.<sup>10</sup>

<sup>1</sup>On August 3, 2022, the Committee approved S. 4460, Eradicating Narcotic Drugs and Formulating Effective New Tools to Address National Yearly Losses of life Act, with an amendment 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. That bill is exactly the same as S. 206. Accordingly, this committee report is, in many respects, similar to the committee report for S. 4460. See S. Rept. 117–193.

<sup>2</sup>Centers 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](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm)).

<sup>3</sup>*Id.*

<sup>4</sup>U.S. Customs and Border Protection, Home Page ([www.cbp.gov/about](http://www.cbp.gov/about)) (accessed Aug. 31, 2022).

<sup>5</sup>Government Accountability Office, *Border Security: CBP Could Improve How It Categorizes Drug Seizure Data and Evaluates Training* (GAO–22–104725) (May 2022).

<sup>6</sup>U.S. Customs and Border Protection, Drug Seizure Statistics ([www.cbp.gov/newsroom/stats/drug-seizure-statistics](http://www.cbp.gov/newsroom/stats/drug-seizure-statistics)) (accessed Aug. 31, 2022).

<sup>7</sup>Drug Enforcement Administration, *2020 National Drug Threat Assessment* (DEA–DCT–DIR–008–21) (Mar. 2021).

<sup>8</sup>U.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).

<sup>9</sup>*Id.*

<sup>10</sup>U.S. Customs and Border Protection, CBP Enforcement Statistics Fiscal Year 2022 ([www.cbp.gov/newsroom/stats/cbp-enforcement-statistics](http://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics)) (accessed Aug. 31, 2022).

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.<sup>11</sup> The report noted that according to OFO guidance, policies are required to be updated at least once every three years.<sup>12</sup> 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.<sup>13</sup>

S. 206 addresses GAO's findings by requiring CBP review and update, their OFO inspection policies for ports of entry as needed, but 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. 206 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. 206, the END FENTANYL Act, on February 1, 2023, along with Senators Mike Braun (R-IN), Dianne Feinstein (D-CA), Margaret Wood Hassan (D-NH), and Senator Jacky Rosen (D-NV).

The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 206 at a business meeting on March 29, 2023. The Committee ordered the bill to be reported favorably by a roll call vote of 11 yeas and 0 nays, with Senators Peters, Hassan, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley voting in the affirmative, and with Senators Carper, Sinema, Johnson, and Marshall voting yea by proxy, for the record only.

### 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 ef-

<sup>11</sup> Government Accountability Office, *Land Ports of Entry: CBP Should Update Policies and Enhance Analysis of Inspections* (GAO-19-658) (Aug. 2019).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

fectively respond to changes in tactics and techniques designed to disguise illicit activity, such as drug and human smuggling.

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

<b>S. 206, END FENTANYL Act</b>			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 29, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
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
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
		<b>Mandate Effects</b>	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate? No	
		Contains private-sector mandate? No	
* = between zero and \$500,000.			

S. 206 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 would also 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. 206 would cost less than \$500,000 over the 2023–2028 period. Such spending would be subject to the availability of appropriated funds.

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

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

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.

