



Border Control

Overview of the Border Security Results Act of 2013 Bipartisan Bill H.R. 1417 Unanimously Voted out of House Homeland Security Committee 5/15/2013

The House approach regarding border control is to require (i) an evaluation of the current state of the border and then (ii) the development of specific metrics to determine when operational control and situational awareness of all international and maritime borders is obtained, with (iii) GAO confirmation of when such metrics are satisfied. DHS is also required to achieve greater security and efficiency at the ports of entry. H.R. 1417 is an authorizations bill and does not contain appropriations language – rather than putting money towards border security at the front end, once DHS develops sound metrics, then it is assumed that adequate appropriations will follow.

Definitions

- Cocaine Removal Effectiveness Rate: The percentage that results from dividing the amount of cocaine removed by DHS's maritime security components inside or outside a transit zone, by the total documented cocaine flow rate as contained in Federal drug databases.
- Consequence Delivery system: The series of consequences applied to persons illegally entering the U.S. by the Border Patrol (BP) to prevent illegal border crossing recidivism.
- Got Away: An illegal border crosser who, after making an illegal entry into the U.S. is neither turned back or apprehended.
- High Traffic Areas: Sectors along the northern and southern borders that are within the responsibility of the BP and have the most illicit cross-border activity, informed through situational awareness.
- Illegal Border Crossing Effectiveness Rate: The percentage that results from dividing the number of apprehensions and turn backs by the number of apprehensions, turn backs and got aways. The data used by DHS to determine this rate shall be collected and reported in a consistent and standardized manner across all sectors.
- Major Violator: A person or entity that has engaged in serious criminal activities at any land, air, or sea port of entry, including possession of illicit drugs, smuggling of prohibited products, human smuggling, weapons possession, use of fraudulent U.S. documents, or other offenses serious enough to result in arrest.
- Operational Control: A condition in which there is a not lower than 90 percent illegal border crossing effectiveness rate and a significant reduction in the movement of illicit drugs and other contraband through such areas is being achieved.
- Situational Awareness: Knowledge and an understanding of current illicit cross-border activity, including cross-border threats and trends concerning illicit trafficking and unlawful crossings along the international borders of the U.S. and in the maritime environment, and the ability to forecast future shifts in such threats and trends.
- Transit Zone: The sea corridors of the western Atlantic Ocean, the Gulf of Mexico, the Caribbean Sea, and the eastern Pacific Ocean through which undocumented migrants and illicit drugs transit, either directly or indirectly, to the U.S.
- Turn Back: An illegal border crosser who, after making an illegal entry into the U.S., returns to the country from which such crosser entered.

Reports on Current Border Security Status: General

- Requires DHS to issue a baseline report describing the current state of situational awareness and operational control of the border within 90 days of enactment. DHS is also required to update this report every 180 days until the border is deemed to be under operational control and thereafter annually.
- Reports must be submitted to appropriate Congressional committees and the GAO.
- Report must include an identification of the high traffic areas and the illegal border crossing effectiveness rate for each Border Patrol sector along the northern and southern borders.

GAO Report

- Requires the GAO within 90 days of receipt of the report above to review it and verify the data and methodology used by DHS to determine high traffic areas and the illegal border crossing effectiveness rate. GAO must report on this to the appropriate congressional committees.

Strategy to Secure the Border: Achieve Situational Awareness and Operational Control

- Within 180 days of enactment DHS must submit to the appropriate congressional committees a comprehensive strategy to gain and maintain operational control of high traffic areas within 2 years after submission of an implementation plan and to obtain operational control along with southwest border within 5 years.

Contents of Strategy

- Shall contain at a minimum, a consideration of the following:
 - An assessment of principal border security threats, including threats relating to the smuggling and trafficking of humans, weapons, and drugs.
 - Efforts and analyze and disseminate border security and border threat information between DHS border security components and with other Federal departments and agencies with border missions.
 - Efforts to increase situational awareness in accordance with privacy, civil liberties, and civil rights protections through the use of surveillance capabilities developed or utilized by DOD, including any technology determined to be in excess by DOD, and the use of manned aircraft and unmanned aerial systems, including camera and sensor technology.
 - Efforts to detect and prevent terrorists and instruments of terrorism from entering the U.S.
 - Efforts to ensure that any new border security technology can be operationally integrated with existing technologies in use by DHS.
 - An assessment of existing efforts and technologies used for border security and the effect of the use of such efforts and technologies on civil rights, private property rights, privacy rights, and civil liberties.
 - Technology required to maintain, support, and enhance security and facilitate trade at ports of entry, including nonintrusive detection equipment, radiation detection equipment, biometric technology, surveillance systems, and other sensors and technology that DHS determines necessary.
 - Operational coordination of all DHS border security components.
 - Consideration of lessons learned from Operation Jumpstart and Operation Phalanx. Operations Jumpstart and Phalanx were conducted to provide personnel in support of DHS's border security mission to allow the Border Patrol (BP) time to recruit, hire, train, and field additional BP agents. DHS has achieved that objective – would like DHS to review these programs and analyze them.

- Cooperative agreements and information sharing with Federal, State, local, Tribal, and territorial law enforcement agencies that have jurisdiction on the Northern or Southern Border, or the maritime environment, and from border community stakeholders, including representatives from border agricultural and ranching organizations and representatives from business and civic organization along the Northern or Southern border.
- Agreements with foreign governments that support the border security efforts of the U.S., including coordinated installation of standardized land border inspection technology, such as license plate readers and RFID readers.
- Staffing requirements for all border security functions.
- A prioritized list of R&D objectives to enhance the security of the international land and maritime borders.
- An assessment of training programs, including those aimed at identifying and detecting fraudulent documents; protecting the civil constitutional, human, and privacy rights of individuals; understanding the scope of enforcement authorities and the use of force policies; screening, identifying, and addressing vulnerable populations, such as children and victims of human trafficking; and social and cultural sensitivity toward border communities.
- Local crime indices of municipalities and counties along the Southern border.
- Assessment of how border security operations affect crossing times.
- Metrics developed for each domain (air, land, and sea)

Implementation Plan

- Within 90 days of submission of the strategy, DHS is required to submit a detailed plan to implement the strategy to the appropriate congressional committees and GAO. This plan shall include an implementation plan for each of the border security components and specify what protections will be put in place to ensure that staffing and other resources won't be diverted from the ports of entry to areas between the ports of entry.
- The plan will include an integrated master schedule and cost estimates, including lifecycle costs, and a comprehensive border security technology plan that includes the following elements:
 - A documented justification for technology choices, deployment locations, fixed versus mobile assets, a timetable for procurement and deployment, estimates of operation and maintenance costs, identification of impediments to deployment of such technology, and estimates of the relative cost effectiveness of various border security strategies and operations, including deployment of personnel and technology, and construction of new physical and virtual barriers. and estimates of the cost effectiveness of various border security strategies and operations.
- Requires GAO to review DHS's implementation plan. GAO is required to submit findings within 90 days after receiving the plan.

Periodic Updates

- Requires the strategy and implementation plans to be updated no later than 180 days after the submission of each Quadrennial Homeland Security Review (QHSR).

Metrics for Securing the Border Between Ports of Entry

- Requires DHS to implement metrics to measure the effectiveness of security between ports of entry within 120 days. These metrics include:
 - An illegal border crossing effectiveness rate;

- An illicit drug seizure rate which measures the amount and type of illicit drugs seized by the BP in any FY compared to an average of the amount and type of drugs seized by the BP for the prior FY;
- A cocaine seizure effectiveness rate measured as a percentage that results from dividing the amount of cocaine seized by the BP by the total documented cocaine flow rate as contained in Federal drug databases;
- Estimates using alternative methodologies such as recidivism data, survey data, known flow data, and technologically-measured data of total attempted illegal border crossings, total deaths and injuries resulting from attempted illegal border crossings, the rate of apprehension of illegal border crossers, and the inflow into the U.S. of illegal border crossers who evade apprehension;
- Estimates of the impact of the Border Patrol's Consequence Delivery System on the rate of recidivism of illegal border crossers.

Metrics for Securing the Border at the Ports of Entry

- Requires DHS to implement outcome-based metrics to measure the effectiveness of security between ports of entry within 120 days. Metrics include:
 - An inadmissible border crossing rate which measures the number of known inadmissible border crossers who are apprehended, excluding those border crossers who voluntarily withdraw their applications for admission, against the total estimated number of inadmissible border crossers U.S. CBP fails to apprehend.
 - An illicit drug seizure rate which measures the amount and type of illicit drugs seized by U.S. CBP in any FY compared to an average of the amount and type of drugs seized by U.S. CBP for the immediately preceding 5 FYs;
 - A cocaine seizure effectiveness rate measured as a percentage that results from dividing the amount of cocaine seized by the U.S. CBP by the total documented cocaine flow rate as contained in Federal drug databases;
 - Estimates using alternative methodologies of inadmissible border crossers attempting to enter the U.S. and their rate of apprehension determined by alternative methodologies such as recidivism data, survey data, and know flow data.
 - The number of infractions related to personnel and cargo committed by major violators who are apprehended by CBP at ports of entry, and the estimated number of infractions committed by major violators who aren't apprehended.
 - A measurement of how border security operations affect crossing times.
- The IG of DHS is required to carry out covert testing at ports of entry and submit to the Secretary of DHS and Congress (appropriate committees) a report that contains testing results.

Metrics for Securing the Maritime Border

- Requires DHS to implement outcome-based metrics to measure the effectiveness of security between ports of entry within 120 days. Metrics include:
 - An estimate of the total number of undocumented migrants the DHS maritime security components fail to interdict.
 - An undocumented migrant interdiction rate which measures the number of undocumented migrants interdicted against the total estimated number of undocumented migrants the DHS maritime security components fail to interdict.
 - An illicit drugs removal rate which measures the amount and type of illicit drugs removed by DHS's maritime security components inside a transit zone in any FY compared to an average of the amount and type of illicit drugs removed by DHS's maritime components inside a transit zone for the immediately preceding 5 FYs.

- An illicit drugs removal rate which measures the amount of illicit drugs removed by DHS's maritime components outside a transit zone in any FY compared to an average of the amount of illicit drugs removed by them for the immediately preceding 5 FYs.
- A cocaine removal effectiveness rate inside a transit zone.
- A cocaine removal effectiveness rate outside a transit zone.
- A response rate which measures DHS's ability to respond to and resolve known maritime threats, both inside and outside a transit zone, by placing assets on-scene, compared to the total number of events with respect to which DHS has known threat information.

Collaboration

- DHS shall collaborate with the head of a national laboratory within DHS's laboratory network with prior demonstrated border security expertise and the head of a university-based center of Excellence to evaluate the metrics required above ensuring their suitability and statistical validity for each metric.
- DHS must also consult with border State Governors and appropriate representatives of the BP and CBP as part of this collaboration.

Recommendations Relating to Certain Other Metrics

- The head of the national laboratory and the head of a border security university-based center shall make recommendations to DHS for other suitable metrics that may be used to measure the effectiveness of border security.

Evaluation by the GAO

- DHS will provide GAO the data and methodology used to develop these metrics.
- This information shall be utilized by the Comptroller General of the U.S. to provide a report, within 270 days, on the suitability and statistical validity of such data and methodology.

Certifications and Reports Relating to Operational Control

- Requires DHS to submit a report to the Committee and GAO if situational awareness and operational control of high traffic areas is achieved within 2 years and within 5 years if the Secretary determines operational control has been achieved along the entire SW border. DHS must also submit an annual certification once operational control has been achieved along the entire SW border.
- Then GAO must submit a report to Congress assessing DHS's certifications (within 120 days after conducting the reviews described above).

Failure to Achieve Situational Awareness or Operational Control

- Requires DHS to submit a report to the appropriate congressional committees if situational awareness and operational control have not been achieved in high traffic areas within 2 years and along the entire SW border in 5 years. DHS has to submit reports to Congress on the failure to achieve these benchmarks within 60 days.
- The report must include reasons for failure and recommendations on additional steps needed to achieve situational awareness and operational control.
- DHS is also required to issue this report if operational control is not annually maintained.

GAO Report on Border Security Duplication and Cost Effectiveness

- Requires GAO within 1 year after enactment to submit to the appropriate congressional committees a report addressing areas of overlap in responsibilities within the border security functions of DHS.
- This report must also address the cost effectiveness of the various border security strategies including considering the relative cost of strategies such as deploying personnel and technology, or the construction of virtual or physical barriers.

Reports

- Within 60 days of enactment and annually thereafter, DHS shall submit to the appropriate congressional committees a report on the following:
 - A resource allocation model for current and future year staffing requirements that includes optimal staffing levels at all land, air, and sea ports of entry, and an explanation of CBP methodology for aligning staffing levels and workload threats and vulnerabilities and their effects on cross border trade and passenger travel across all mission areas.
 - Detailed information on the level of manpower available at all land, air, and sea ports of entry and between ports of entry, including the number of canine and agricultural specialists assigned to each such port of entry.
 - Detailed information that describes the difference between the staffing model suggests and the actual staffing at each port of entry and between the ports of entry.
 - Detailed information that examines both the security impacts of entering into a reimbursement agreement with foreign governments for CBP preclearance facilities.

US-VISIT Exit Implementation

Requires DHS within 180 days of enactment to submit a plan to Congress to implement a biometric exit system at all ports of entry. If the Secretary determines that development of such a system is not feasible, the Secretary shall submit a separate plan (within 180 days of enactment) detailing an alternative program to provide the same level of security within two years of enactment.

Prohibition on Land Border Crossing Fee Study

DHS may not conduct any study relating to the imposition of a border crossing fee for pedestrians or passenger vehicles at land ports of entry along the southern or northern border of the U.S.