



AMERICAN ASSOCIATION OF PORT AUTHORITIES

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Testimony of Bethann Rooney

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On Behalf of the
American Association of Port Authorities**

**Before the
The United States House of Representatives
Committee on Transportation & Infrastructure
Subcommittee on Coast Guard and Maritime Transportation**

**Hearing: *“Tenth Anniversary of the Maritime Transportation Security Act:
Are We Safer?”***

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10:00 a.m.**

Good morning. I am Bethann Rooney, Manager of Port Security at The Port Authority of New York and New Jersey. I am testifying today on behalf of the American Association of Port Authorities (AAPA), where I serve as Chairman of the Port Security Caucus and a member of the AAPA Security Committee. My testimony today is on behalf of the AAPA's 81 U.S. members. AAPA port members are public entities, divisions or agents of state and local governments mandated by law to serve the public by developing, maintaining and operating port facilities.

I had the pleasure of testifying before this Subcommittee on the “Implementation of the Maritime Transportation Security Act of 2002” in June of 2003 and I am pleased to be here again today to discuss the implementation of the Act over the past decade.

Prior to 9/11, security was not a top concern for most U.S. ports. That changed in an instant after that tragic day, and Congress and the Administration took quick and decisive action to help focus on the risk to our seaports. Enhancing maritime security and protecting our ports from acts of terrorism and other crime remains a top priority for the AAPA and U.S. ports authorities.

Protecting America's ports is critical to our nation's economic growth and vitality, and is an integral part of homeland security and national defense. Ports handle 99 percent of our overseas (non-NAFTA) cargo by volume and enable the deployment of our Armed Services. America's consumer-driven market relies upon a very efficient logistics chain, of which our ports are a critical part, to facilitate the just-in-time delivery system. Shippers want their goods moved in the fastest, most reliable, cheapest and most secure method. The challenge for the past ten (10) years has been to integrate security into the efficient and economic flow of commerce.

The MTSA was groundbreaking legislation that authorized the United States Coast Guard and other agencies to establish maritime security standards and mandate security enhancements to ports, terminals and vessels. The cornerstone of these new mandates was a requirement for vessels and facilities to conduct vulnerability assessments and develop Vessel and Facility Security Plans. We commend the U.S. Coast Guard for its excellent job in developing the regulations — both the initial plans in 2004 and the subsequent updated plans in 2009 — for enforcing those regulations and for working in partnership with the industry to secure our ports.

Security Plans and Assessments

Port and vessel security is a continuous activity that requires constant attention on the part of many individuals. Therefore, the process of renewing the Facility Security Plans every five (5) years is relatively simple with minimal to no cost required. The cost of meeting and maintaining the requirements of the security regulations, however, is significant.

Implementing MTSA is not a one-time expense, but rather requires the expenditure of recurring costs in order to operate, maintain and staff the security equipment, systems, and processes put in place. For example, in 2003, the Port Authority of New York & New Jersey estimated that we would spend \$32.5 million to implement the Maritime Transportation Security Act, but during the past eleven (11) years, the Port Authority has invested more than \$166 million on port security.

The foundation of a robust security plan and program is a comprehensive and accurate risk assessment. While tremendous progress has been made throughout the Department of Homeland Security in this area in the past ten (10) years, it is AAPA's belief that there is still room for improvement. In the Coast Guard regulations, guidance is provided on what should be included in a Facility Security Assessment. Both this guidance and the online assessment tool that was made available by the Transportation Security Administration (TSA) to port facilities amount to little more than a physical security survey and a checklist of how the facility meets the regulatory requirements, rather than a detailed risk assessment.

Over the years the Coast Guard's Maritime Security Risk Assessment Model, or MSRAM, which was developed in response to Section 70102 of the MTSA, has evolved into a very robust and comprehensive risk assessment tool. For example, in the Port of New York and New Jersey, more than 3,200 threat scenarios have been evaluated for nearly 400 pieces of Maritime Critical Infrastructure/Key Resources (MCI/KR). It is a dynamic tool that is used regularly to inform our force protection plans, resource allocations, grant award decisions and strategic risk management decisions. To be most effective, AAPA believes that MSRAM should be used uniformly by all federal agencies that assess risk in the maritime environment. Additionally, MSRAM should be made available in an unclassified version, on a limited basis to regulated facilities and vessels to conduct detailed risk assessments of their own facilities or vessels using the same scoring criteria that the Coast Guard uses. This provision is included in the Coast Guard Authorization Act of 2010 by the 111th Congress, but has not been implemented yet.

Port Security Grant Program

Key to enhancing and maintaining the security of ports is the Port Security Grant Program. It provides much needed help to port facilities to harden security to protect these vital ports of entry from acts of terrorism. Since its inception, the program has provided more than \$2.7 billion in grants to harden security at port facilities.

Through fiscal year 2009, Congress has appropriated the authorized level of \$400 million annually for the Port Security Grant program. However, in the past few years, Congressional support for all Homeland Security Grants, including the Port Security Grant Program has eroded. In fiscal year 2012, Congress appropriated \$1.3 billion for all Homeland Security Grants

(a 40 percent cut over the previous year) and gave the DHS Secretary the authority to determine the final funding level for each individual program. Only \$97.5 million was allocated in fiscal year 2012 for port security. Our economy, our safety and our national defense depend largely on how well we can protect our seaports, and cuts in federal funding present significant challenges in the security of our ports. According to the 9/11 Commission Report, “opportunities to do harm are as great, or greater, in maritime and surface transportation” as they are in aviation. We urge Congress to provide full funding for the Port Security Grant Program so that our ports continue to be a priority in our country’s war against terrorism.

DHS is also proposing a move to merge all grant programs into one single program that would fund all critical infrastructure segments (i.e., Transit, Inter-City Rail, Urban Area Security Initiative and Emergency Management Performance Grants). The States would manage this new program, a move that the AAPA strongly opposes. We encourage your Committee to continue to voice opposition to this new structure.

From FY07 through FY11, all Group 1 and 2 ports were designated a sum of money based on a national risk analysis. The decision on grant awards to individual applicants in each port area was left to a group of local experts who were appointed by the Coast Guard Captain of the Port. Then in FY12, all ports competed for a share of funding in their corresponding group and decisions on award allocations were made by DHS. The result is that DHS gave small amounts of funding to many projects rather than fully funding the higher priority projects that in the opinion of local experts mitigated higher risks. If the grants remain competitive, AAPA believes that more weight should be given to recommendations of the local experts so that risks are not created when projects are not fully funded or cannot be completed without sufficient funding.

In these tight economic times, 25 percent cost-share for public agencies is a disincentive to making additional security enhancements, updating or replacing outdated security systems and equipment installed up to ten years ago, and implementing the outstanding initiatives in the DHS-approved Port-Wide Strategic Risk Management Plans for each port area. The Port Security Grant Program is one of a few DHS grant programs that requires a cost-share. Transit grants, urban area security initiative and state homeland security grants, for example, are all exempt from cost-share requirements. At a minimum, AAPA urges Congress to direct the Department to eliminate the cost-share requirement for public agencies and their tenants.

A major challenge with the Port Security Grant Program, one that has received ongoing attention from both Congress and the Administration, is the rate at which funds are spent or that the monies which have been awarded are drawn down. As of July 2012, FEMA reports that more than \$1.6 billion has been awarded since FY07. Approximately \$220 million or 15 percent, however, remains on hold pending federal reviews or the identification of suitable projects. Of the funding that is currently available to be spent, approximately one third has been drawn down already. It is important to understand, however, that the remaining two thirds of the funding is not sitting idle. Work is being done and projects are underway to spend the funding in accordance with the federal rules and guidelines that govern these grants.

The fact remains that for a number of reasons grant spending is not as quick as we would all like it to be. For starters, AAPA members have found that there is a significant time delay between when DHS announces the awards and when FEMA finally completes all of the reviews (budget and environmental and historic reviews) and gives grantees approval to begin making these security improvements. While significant improvements have been made in this area, AAPA believes that further streamlining is still possible to help get the funding out more quickly.

Grantees then need to follow their own internal procurement policies, which for public agencies like our member port authorities can take six to nine months just for a public RFP process to be completed before the contracts are even awarded. Once a project gets underway, there is a lag between when the funds are spent and reimbursement is sought from the federal government, which our members are working to address. The move, however, to shorten the performance period from three years to two years is not going to expedite spending but rather add additional burden to grantees who will need to justify and request an extension simply because the process generally doesn't allow spending to occur quicker. We ask for this Committee's assistance to ensure that the performance period for Port Security Grant funding is no less than three years. Furthermore, it is imperative that extension requests be reviewed expeditiously and be considered for a minimum of one-year increments.

We commend Secretary Napolitano and FEMA for their announcement earlier this year on a series of measures that provide grantees with additional flexibility to accelerate the spending of their remaining FY07 – FY11 grant funds. These measures enable grantees to apply grant balances to more urgent priorities. It also allowed grantees to use funding to cover additional

personnel costs and maintain previously purchased equipment which was all originally authorized under the Maritime Transportation Security Act but not fully implemented.

Radiation Portal Monitors

The MTSA also authorized grant funding to be used for “the cost of screening equipment, including equipment that detects weapons of mass destruction and conventional explosives, and the testing and evaluating of such equipment to certify secure systems of transportation.”

Unfortunately, in accordance with grant guidance and Office of Management and Budget requirements, grant funding cannot be used for purchases or services that support a federal function. Cargo inspection or the process of ensuring that goods entering the United States are free from the presence of restricted or prohibited items like weapons of mass destruction and explosives is a federal function.

When the DHS budget fully funded this function, particularly the installation and maintenance of the Radiation Portal Monitors (RPMs) that Customs and Border Protection (CBP) uses to scan 100 percent of import containers that enter our ports, the limitations on the use of grant funding for screening equipment was not a problem. Today, the Domestic Nuclear Detection Office (DNDO) and CBP are fiscally constrained and are asking port authorities and marine terminal operators to share the cost of the installation and maintenance of DHS-owned, -operated and -controlled equipment. This includes all of the engineering, permits and installation costs, infrastructure such as fiber, electrical, plumbing, foundations and protective barriers as well as the associated office space for CBP personnel including furniture, telephone and data lines. To give you an example, for one project in the Port of New York and New Jersey, it is estimated that our terminal operator will be responsible for nearly \$2.5 million while DHS will contribute approximately \$750,000 for the same project.

As imports increase, container terminals must reconfigure, expand or be newly developed to keep pace with the growth in global commerce. Each of these facilities requires sufficient detection equipment so that the flow of legitimate commerce is not inhibited. We would like to work with DHS to develop a plan to upgrade obsolete equipment in our ports. Port facilities should not be responsible for paying for DHS equipment. If we are, we should be able to use grant funding to help offset the cost.

Transportation Worker Identification Credential

The last major element of the MTSA that we would like to address is the Transportation Worker Identification Credential (TWIC) program. AAPA and its members have worked closely with TSA and Coast Guard on implementation of the TWIC requirements. We strongly support the TWIC program and look forward to the day when it will be fully implemented.

While the TWIC includes a biometric security feature, it is currently not being used at most facilities due to the lack of a final reader specification and certification process as well as a final rulemaking for the use of the readers. Therefore, the high-tech and high-cost security features imbedded in the TWIC are not being utilized. The visual inspection of TWICs is onerous and prone to errors and complacency. Without readers it is also impossible to identify TWICs that have been reported as being lost, stolen or otherwise revoked or suspended by DHS.

By the end of this year and the first half of 2013, the majority of TWICs will expire. We are pleased that TSA has taken steps to address this issue and are offering an option of paying \$60 to acquire a three-year Extended Expiration Date (EED) card instead of the standard five-year TWIC. However, our member ports are concerned that the lack of an updated threat assessment could compromise the security of our facilities. We are also concerned that the renewal or extension process be convenient and efficient. TSA and their new contractor should again work closely with stakeholders in the maritime environment to educate the workforce regarding these renewal deadlines and requirements, including such issues as enrollment center locations, bulk payments and the availability of on-site enrollments and activations.

When the reader rule is finally published, it is imperative that sufficient time be given to ports to implement the requirements and that adequate port security grant funding be available. TWIC projects should be a top priority of the grant program once the reader rule is released. TWIC projects that were previously awarded funding but could not be completed due to the lack of a reader rule should be funded first. We encourage the Coast Guard to continue their proposed rulemaking process and for TSA to complete the reader evaluation and testing and publication of a Qualified Technology List (QTL).

Enhancements to MTSA

As this Committee considers future enhancements to the MTSA, AAPA respectfully requests you to also consider the following:

- Mutual recognition of U.S. Coast Guard-approved Facility and Vessel Security Plans by CBP for Tier 2 status in the Customs Trade Partnership Against Terrorism (C-TPAT) program.
- Providing marine terminals the equivalent of a “No Fly List” so that we know if TSA has denied a TWIC so that we don’t unknowingly allow those individuals access to our facilities with an escort.
- A requirement to display the TWIC on the outermost garment above the waist, similar to what is already required of Security Identification Display Area (SIDA) badge holders in the aviation industry.
- Minimum security standards for maritime support services, including supply vessels, bunker providers and launch operators.
- Identification by vessels of a Security Individual (SI), similar to the Qualified Individual (QI) that they are required to nominate under the Oil Pollution Act of 1990.

Thank you for inviting the Port Authority of New York and New Jersey to testify on the Tenth Anniversary of the Maritime Transportation Security Act. We are safer than we were ten (10) years ago and our agency remains committed to doing its part to protect America.

Thank you. I would be happy to answer any questions.

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