

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

May 5, 2014

The Honorable Thomas R. Carper
Chairman
Senate Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Carper:

Pursuant to 6 U.S.C. § 982(b), I hereby notify you of my decision to renew the extension of the deadline for full-scale implementation of 100% scanning of U.S.-bound maritime cargo containers for an additional two years.

The 100% provision requires the scanning of all U.S. bound maritime cargo containers by radiation detection equipment and non-intrusive imaging systems at foreign ports prior to the cargo being loaded onto a vessel.¹ The intent of the law is to prevent radiological and nuclear terrorism by denying terrorists the ability to transport radiological/nuclear weapons via one of the more than 12 million maritime containers that enter the U.S. each year from more than 800 ports world-wide. The law directed DHS to implement this provision by 2012, but authorized DHS to extend the deadline for two years and renew such extension in additional two-year increments if at least two of six statutory conditions existed. Former Secretary Napolitano exercised this authority and formally notified Congress by letter dated May 2, 2012 that she had extended the deadline until July 1, 2014.

DHS finds that, in 2014, the conditions and supporting evidence cited in the 2012 deadline extension continue to prevail and preclude full scale implementation of the provision at this time. In particular, the use of systems that are available to scan containers would have a negative impact on trade capacity and the flow of cargo. Additionally, systems to scan containers cannot be purchased, deployed, or operated at ports overseas because ports do not have the physical characteristics to install such a system.²

As I said at and around the time of confirmation hearing and after, I take compliance with legal obligations seriously, and do not believe it is appropriate to utilize my authority to waive the deadline for compliance with a law's requirement without at least a demonstrated plan to eventually comply. I have also pledged to a number of members of Congress who were the

¹The Security and Accountability for Every Port (SAFE Port) Act, October 13, 2006 (Public Law 109-347), Section 232, codified at 6 U.S.C. 982, as amended by Section 1701 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53, August 3, 2007).

² See 6 U.S.C. 982(b)(4)(c), (4)(e),

principal proponents of the 100% scanning requirement that, in the interim, DHS will make good faith efforts to improve our scanning capabilities abroad, in accordance with the law's overall objective.

I have personally reviewed our current port security and DHS's short term and long term ability to comply with 100% scanning requirement. Following this review, I must report, in all candor, that DHS's ability to fully comply with this unfunded mandate of 100% scanning, even in long term, is highly improbable, hugely expensive, and in our judgment, not the best use of taxpayer resources to meet this country's port security and homeland security needs. I would welcome the opportunity to brief members of Congress more fully about my views.

Having said all this, I have instructed my staff that DHS must undertake a better, good-faith job of complying with the 100% scanning requirement's underlying objectives, notwithstanding this exercise of waiver authority and the obstacles to full compliance I have highlighted above. More specifically, I have instructed DHS to do the following:

- Increase Scanning Abroad. DHS will work to increase the percentage of containers scanned abroad, with an emphasis on high risk cargo. DHS currently designates less than one percent of U.S.-bound maritime containerized cargo as high-risk. Under the Container Security Initiative and the Secure Freight Initiative the majority (85%) of this high-risk cargo is scanned at foreign ports prior to being laden on the vessel. DHS will seek to increase the percentage of high-risk cargo scanned by prioritizing diplomatic engagement with host governments to increase their support of current Container Security Initiative operations and discuss potential expansion of the initiative to additional key ports to ensure that such deployments align with high-risk cargo.
- Improve targeting. DHS, specifically U.S. Customs and Border Protection, will continue to refine targeting algorithms and rules within the Automated Targeting System to better identify high-risk containers warranting additional scrutiny. In addition, DHS will continue efforts to improve scanning equipment algorithms to reduce the number of "false positives." This will enable resources to be focused on riskier containers without disrupting the flow of legitimate commerce.
- Engage Stakeholders. DHS will further explore potential new roles for industry stakeholders and/or international partners in scanning U.S.-bound maritime cargo containers. Enhancing private sector participation in the scanning regime for high-risk containers, including the development, operation, or maintenance of relevant equipment or systems, could provide benefits in terms of targeting and DHS resource allocation, as well as opportunities for increased cooperation with international partners, port operators, and other relevant actors.
- Address other potential vulnerabilities. After assessing radiological/nuclear risks to maritime containerized cargo as well as other supply chain and non-supply chain pathways, DHS's Domestic Nuclear Detection Office concluded that enhanced detection within a single pathway (i.e., 100% scanning of maritime containerized cargo) would not substantially reduce overall risk. Instead, the assessment indicated that a broader,

multi-faceted and risk-based approach would better protect the United States from this threat. As we continue to address radiological/nuclear threats in maritime cargo, DHS also will reduce vulnerabilities in other pathways.

Ensuring the security of the United States is a mission the employees of DHS take seriously and one that the Department has a solemn duty to uphold. DHS looks forward to continued engagement with Congress as we work to strengthen and augment layers of security in place to reduce the risk of illicit radiological and nuclear materials being transported into the United States.

I appreciate your interest in this matter and we look forward to working with you on this and other homeland security issues. If you require addition information, please do not hesitate to contact me at (202) 282-8203.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeh Charles Johnson". The signature is highly stylized and somewhat illegible due to its cursive and overlapping nature.

Jeh Charles Johnson
Secretary

