

October 15, 2018

The Honorable Shelley Moore Capito
Chairman
Senate Committee on Appropriations
Subcommittee on Homeland Security
SD-131 Dirksen Senate Office Building
Washington, DC 20510
c/o [Adam Telle](#)

The Honorable Jon Tester
Ranking Member
Senate Committee on Appropriations
Subcommittee on Homeland Security
D-128 Dirksen Senate Office Building
Washington, DC 20510
c/o [Scott Nance](#)

The Honorable Kevin Yoder
Chairman
House Committee on Appropriations
Subcommittee on Homeland Security
B-307 Rayburn House Office Building
Washington, DC 20515
c/o [Donna Shahbaz](#)

The Honorable Lucille Roybal-Allard
Ranking Member
House Committee on Appropriations
Subcommittee on Homeland Security
1016 Longworth House Office Building
Washington, DC 20515
c/o [Derek Newby](#)

RE: CBP Facilities Concerns and FY 2019 Homeland Security Appropriations Conference Report Priorities

Dear Chairwoman Capito, Chairman Yoder and Ranking Members Tester and Roybal-Allard:

The American Association of Port Authorities (AAPA) greatly appreciates the work by the House and Senate on the FY 2019 Homeland Security Appropriations bills. AAPA is the unified and collective voice of the seaport industry. We write you today to voice strong support for the Department of Homeland Security (DHS) programs, specifically Customs and Border Protection (CBP) staffing, the Port Security Grant Program (PSGP) and to raise concerns regarding CBP facility requests to port authorities, as you conference the FY 2019 DHS Appropriations bills.

CBP Staffing

AAPA strongly supports both the House and Senate increases in CBP staff to 375, up from 328 CBP staff appropriated in the FY 2018 omnibus bill. The CBP staffing increase is a strong step in the right direction, but as you know CBP staffing at our seaports continues to be a major concern. AAPA recommends that a minimum of 500 new CBP officers be hired annually, above the current annual attrition rate of 700 CBP officers. We request that if there is an opportunity to increase the CBP staffing levels during conference discussions, that the Committee strongly considers making these investments. Additionally, AAPA requests that the Committee works with CBP on its staffing model to develop a mechanism to send a greater proportion of CBP staffing resources to seaports.

Reimbursable Program (559)

CBP estimates that it is short 500 officers in the maritime environment. To address a shortage of staff and funds, Congress authorized a Section 559 program that allows for reimbursable services and donation agreements. At the time, the 559 was a pilot program and not intended to become permanent. While this program can be helpful to enhance the efficient movement of maritime cargo, it is not a long-term solution. This program is not flexible for short-term needs, must compete for limited overtime hours for CBP officers and establishes an

unfair playing field, where some ports must pay for CBP services, while other ports do not have to pay. The cost can be substantial for these services.

AAPA is concerned that CBP is relying increasingly on the 559-reimbursable program to address CBP staffing shortages. AAPA recommends that conferees request that CBP provide a report or projection using the current 559 agreements as a baseline on how these agreements will be supplemented by a proactive hiring program at seaports or other ports of entry, where heavy volumes of trade and passengers are processed.

Port Security Grant Program

AAPA strongly supports both the House and Senate funding levels of \$100 million for the PSGP. We appreciate the Appropriations Committees' continued support for this vital program. Currently, over a quarter of the nation's GDP moves through our nation's ports.

We want the Committees and Conferees to understand that security threats evolve, and that the PSGP delivers great value in a changing and evolving security landscape. For example, the U.S. freight and port industry has changed since 9/11. The U.S. population has increased by 15 percent with a pronounced shift to metropolitan areas, where residents are in densely populated urban areas near port authority facilities that support both freight and passenger activity. In the 17 years since 9/11, freight and passenger volumes have increased significantly at U.S. ports. Between 2001 and 2017, container volumes increased by 71 percent, total foreign trade in short tons increased by 37 percent, and passenger traffic at U.S. cruise ports increased by 98 percent.

Meanwhile, new threats such as cyber, active shooters and soft targets have emerged as real threats to port authorities, communities and the supply chain. In a recent AAPA member survey of the PSGP, 85 percent of AAPA ports reported that they anticipate direct cyber or physical threats to their ports to increase over the next ten years. Conversely, ten years ago, cybersecurity, active shooter, drones, increasing energy exports or other soft targets were not highly anticipated threats facing ports and the supply chain.

We also want to share concerns regarding recent developments with the PSGP. AAPA is completing a report on the PSGP that finds only 25 percent of the PSGP funding is going to port authorities, while 60 percent is going to public sector entities such as fire, police and EMS entities that already have other federal funding sources to draw from. Additionally, 15 percent of PSGP funding is going to the private sector. At the same time, AAPA members identified upwards of \$4 billion in port security investment needs for port authorities alone over the next ten years, which comes to \$400 million annually. But the \$4 billion in port authority needs is just a small slice of the total potential funding need.

We are concerned that the overabundance of public sector applications and demands has pushed ports, small, medium and large, to the side. We are concerned that some ports are not even applying for these grants because it has become public sector heavy for awards, or it is perceived to be so. We recommend that FEMA, starting with the FY 2019 PSGP funding, designate in the Notice of Funding Opportunity a minimum of 50 percent of the overall funding allocation for the PSGP be awarded to port authorities responsible for wide area security of critical port infrastructure, MTSA-regulated facilities and law enforcement and emergency response. We will follow up with the Committee directly on additional recommendations from *The State of Freight IV Port Security Grant Program Report*.

CBP Facility and Reimbursable Services Requests/Demands

A disturbing trend continues with CBP facility and reimbursable requests (sometimes demands) on public seaports. In the past, AAPA has recommended that CBP be required to establish a framework in which the differences in marine port operations are considered and the costs of non-funded services or equipment are established. This includes rightsizing inspection facilities, building or retrofitting a cruise facility.

Still, ports and terminals complain that CBP typically requires far more space and furnishings than are needed, resulting in significant increases in costs to build facilities. Often, change orders are requested by CBP at the last minute, driving up building costs unnecessarily. There continues to be little concern for budget overruns or timely planning in CBP requests.

Unfortunately, the trend continues with no end in sight. This month alone two ports, one on the east coast and one on the west coast, have raised concerns about regional CBP officials requesting/demanding that new CBP facilities be built on port facilities. One port asked CBP what authority or what statute they had to request that the CBP facility be built and were told "that the authority was inherent." AAPA would like a separate interpretation.

In the past, AAPA has requested that the Committee direct CBP to provide that change orders be documented and submitted to Congress in the form of an annual report to be evaluated. However, given the unrelenting CBP demands as of late and the lack of CBP resources; we recommend that the Congress request a report in the conference agreement requiring that within 30 days of enactment of the FY 2019 Homeland Appropriations bill from the CBP commissioner documenting current and anticipated requests from CBP to public port authorities for 1) CBP staff facilities, 2) cruise terminals and 3) services and equipment. The report should also include projected costs and timelines for each request.

Finally, given the lack of clarity on CBP policy as it pertains to facility and reimbursable programs, we ask that CBP discretionary requests stop or pause until the proper oversight can be conducted. We request that when the 116th Congress convenes, the Appropriations and Authorizing Committees conduct oversight hearings on the authority of CBP to make discretionary requests to public ports, and what statute guides these requests. AAPA believes that hearings before both the House and Senate Appropriations and Authorizing Committees would go a long way to providing clarity and certainty to the CBP services and facilities process.

Thank you again for your work on the FY 2019 Homeland Security Appropriations bills and for your commitment to ensuring that our seaports and partners have the resources to keep our ports, communities and supply chain safe and efficient. Please feel free to reach out to me if you have questions.

Sincerely,



Kurt J. Nagle
President & CEO

cc: The Honorable Richard Shelby, Chairman, Senate Appropriations Committee
The Honorable Patrick Leahy, Vice Chairman, Senate Appropriations Committee
The Honorable Rodney Frelinghuysen, Chairman, House Appropriations Committee
The Honorable Nita Lowey, Ranking Member, House Appropriations Committee
The Honorable Nancy Pelosi, Minority Leader, House of Representatives
The Honorable Paul Ryan, Speaker of the House of Representatives
The Honorable Mitch McConnell, Senate Majority Leader
The Honorable Charles Schumer, Senate Minority Leader
The Honorable Claire McCaskill, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs
The Honorable Ron Johnson, Chairman, Senate Committee on Homeland Security and Governmental Affairs
The Honorable Michael McCaul, Chairman, House Committee on Homeland Security
The Honorable Bennie Thompson, Ranking Member, House Committee on Homeland Security