

June 12, 2017

The Honorable John Boozman
Chairman
Senate Committee on Appropriations
Subcommittee on Homeland Security
SD-131 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jon Tester
Ranking Member
Senate Committee on Appropriations
Subcommittee on Homeland Security
SD-128 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Carter
Chairman
House Committee on Appropriations
Subcommittee on Homeland Security
2006 Rayburn House Office Building
Washington, DC 20515

The Honorable Lucille Roybal-Allard
Ranking Member
House Committee on Appropriations
Subcommittee on Homeland Security
1016 Longworth House Office Building
Washington, DC 20515

The Honorable Ron Johnson
Chairman
Senate Committee on Homeland Security and
Governmental Affairs
SD-340 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Claire McCaskill
Ranking Member
Senate Committee on Homeland Security and
Governmental Affairs
SH-442 Hart Senate Office Building
Washington, DC, 20510

The Honorable Michael McCaul
Chairman
House Committee on Homeland Security
H2-176 Ford House Office Building
Washington, DC 20515

The Honorable Bennie Thompson
Ranking Member
House Committee on Homeland Security
H2-117 Ford House Office Building
Washington, DC 20515

Re: FY 2018 Funding and Reauthorization of DHS Programs

Dear Chairmen Johnson, Boozman, Carter and McCaul, and Ranking Members Tester, McCaskill, Roybal-Allard and Thompson:

On behalf of the American Association of Port Authorities (AAPA) and the National Association of Waterfront Employers (NAWE) we want to thank you for your commitment to securing our country. Whether it is policy or funding, it is essential that our approach to national security be comprehensive, integrated and consistent. Since the Department of Homeland Security (DHS) was founded 15 years ago, how we secure our supply chain has evolved. Now more than ever, we live in a global economy with supply chains connecting countries, agricultural regions, manufacturing clusters, technology hubs, and consumer markets. Very often the critical security and commercial connecting points for these supply chains are seaports. Ports have grown as economic drivers with the expansion of trade and serving the substantial coastal population in metropolitan areas as well as connecting our interior states to the global economy. The demand for increasingly secure and efficient supply chains have, in many cases, centered on port regions.

AAPA is the unified and collective voice of the seaport industry in the Americas. AAPA empowers port authorities, maritime industry partners and service providers to serve their global customers and create economic and social value for their communities. Our activities, resources and partnerships connect, inform and unify seaport leaders and maritime professionals in all segments of the industry around the western hemisphere. NAWA represents the interests of the marine terminal and stevedoring industry whose companies operate marine terminals in most major ports of this country. The companies own cargo and cruise terminal facilities or lease them from public port authorities. NAWA members provide employment for thousands of men and women in good paying, skilled jobs.

As Congress prepares to reauthorize DHS programs, and as the new Administration looks to the southern border of the United States, our maritime stakeholders want to emphasize that our coastal ports-of-entry are both international borders and centers of commerce on which the nation depends. This letter includes recommendations for CBP, Port Security Grants and FBI clearance and briefings.

I. CBP

It is a matter of pride that our nation's ports are partners with DHS and specifically Customs and Border Protection (CBP) in securing the gateways and in providing vital support for goods moving out on to the national freight network. AAPA and NAWA have identified certain essential CBP resources and services that are in need so that our ports and terminal operations can function more effectively as secure and productive commercial gateways. We would like to bring the following to your attention and urge you to include these among the matters you will address and resolve in Congress this year.

Maritime CBP Staffing

CBP staffing is essential to effective and efficient administration of the nation's port security policy. CBP has testified before Congress that it is short 500 officers needed to serve the maritime industry. This is a treacherous shortfall. Each year, roughly 1.2 billion metric tons of cargo in international commerce, including more than 11 million cargo containers, arrive at our seaports. Additionally, over 11 million international passengers begin their cruises via U.S. seaports. CBP is on the front line when cargo and passengers enter our country. CBP officers meet the ships at all ports of entry to check the manifests; screen incoming cargo; operate non-intrusive inspection (NII) equipment (including radiation portal monitors); provide specialists to examine imported fruits, vegetables and flowers for potentially harmful diseases; and other missions at our busy gateways. CBP is also responsible for screening all foreign visitors and returning American citizens and passenger ships that enter U.S. seaports.

For America's international gateways to function more effectively and safely, CBP must be adequately funded and staffed. These functions have historically been considered as inherently governmental. If CBP was unable to provide their services within our nation's ports, we would witness a backlog of freight far worse than any bottleneck in the country. We would like to ensure that Congress is mindful of just how important a role CBP services play in our nation's freight network and our economy, and that Congress should work toward fully funding and staffing this vital agency.

In FY 2015, when CBP was funded to hire 2,000 additional staff, fewer than 20 agents were assigned to seaports, and those were only for passenger terminals. This inequity of CBP resources cannot continue. Further complicating this process is that on average CBP loses 700 officers a year mainly to retirement.

Recommendation: Require CBP to have a firmly established staffing strategy designed to perform its mission to support the global commerce our nation demands and includes the assignment of a minimum of 500 additional CBP officers to maritime functions.

More Efficient CBP Hiring Practices

While CBP has had funding to hire new staff, much of the inefficiency in bringing on new staff has been due to the requirements placed on new applicants. As has been brought to light in hearings and news reports, new CBP applicants for law enforcement positions are required to take a polygraph exam. While at face value this is a prudent approach, unfortunately the fail rate for this test is over 65 percent. (Congress did attempt to address some of the polygraph issues in *H.R. 875, the Cross-Border Trade Enhancement Act of 2016* last December, but additional clarifying language is needed). The current procedure appears to have been shown to be a hindrance to achieving the mandated new hire goals.

Additionally, the first assignment new CBP officers receive is to serve on the southern border, which has proven to discourage new applicants, especially older applicants that are established in their community with their family. With the shortage of CBP officers and the annual attrition rate near 700 officers, hiring policies should be directed toward recruiting and retaining new officers, not discouraging new applicants.

Recommendation: The focus should be on filling the open slots at CBP as quickly as possible. With that in mind, CBP should reexamine the validity of the polygraph test; and Congress should actively press CBP to improve the way it screens prospective new hires. As has been suggested by some in Congress, we encourage you to consider waving the polygraph for applicants who currently hold a security clearance or for retiring military applying for CBP positions. Also, Congress should encourage greater flexibility in how CBP assigns its officers as means to widening the potential labor pool. For example, consider giving those who have served our country in uniform overseas some latitude in identifying preferred deployment locations. Consider mandating a veterans CBP hiring program that works with applicants in assigning their work location, instead of insisting on an initial southern border assignment.

Capital Equipment

CBP and ports rely on Radiation Portal Monitors (RPMs) to detect dirty bombs in containerized cargo shipped into this country while supporting efficient transport. RPMs are detection devices that provide CBP with a passive, non-intrusive process to scan truck and other movements of freight for the presence of nuclear and radiological material. Mandated in the Security and Accountability for Every (SAFE) Port Act of 2006, the 22 largest container ports by volume must have RPMs and CBP has expanded this program to other container ports.

More than ten years have passed since RPMs were mandated as a critical element of the Federal government's maritime security program. However, over a decade into this program CBP has no sustainment plan and questions exist regarding responsibility for the maintenance of the RPMs, acquiring new portals during a port expansion, and the provision of the next generation of RPMs. A DHS Office of the Inspector General report in 2013 titled *United States Customs and Border Protection's Radiation Portal Monitors at Seaports* states that, "initial estimates of the deployed RPMs showed an

average useful life of 10 years.” A more recent report now suggests that the RPMs can be relied on for 15 years.

What we hear repeatedly from our member ports, operators and maritime security stakeholders is that there is a lack of clarity and predictability in the funding and management of the RPM program.

Recommendation: RPM detection is a federally mandated and inherently governmental program that deploys government equipment manned by federal employees. DHS is obligated to request adequate federal funding to purchase, install and maintain all RPM equipment at ports throughout the United States, including port terminal expansion and reconfigurations that will occur with rising freight volume. A recapitalization plan should be produced with the objective of operating effective and increasingly efficient security machinery at the marine terminals. It may also prove valuable for DHS to reach out to ports in partnership to develop the next generation of RPMs.

We urge Congress to ensure that DHS produces a business plan that addresses the replacement of aging RPMs and other inspection equipment, as well as the need for sufficient CBP staff hours to manage the equipment.

Reimbursable Operations and Equipment Guidelines Between Ports and CBP

CBP and ports are partners in security and efficiency. Neither can be accomplished if the relationship is predicated on a constant state of negotiation. Increasingly, ports are reporting overly complicated and sometimes contentious negotiations with local CBP on funding operational responsibilities and equipment. CBP responsibilities for federal mandates must be clarified and enforced on the local level, if we are to maintain a high level of national security. (Congress and DHS have authorized the 559 program, which allows ports, terminal operators and other stakeholders to contribute funding and in kind services to receive CBP resources. While this has been a helpful tool for the short term, this is not a sustainable long-term solution).

Furthermore, this process uniformly covers air, land and marine ports of entry as well as all regions. There is no recognition of the differences in form, dimension, or governance of the various ports. The differences are numerous. Marine ports are operated by numerous and varied parties. As opposed to single points of land ports of entry or limited secured airport ports of entry, the marine port of entry exists anywhere along the coast or within a geographic port. Marine ports of entry most often do not serve as an office or place of duty for CBP.

Additionally, business patterns change both routinely and non-routinely, such as seasonal changes in cruise lines and shipper/carrier commercial choices in delivery of containers by recently created alliances. Commercial port partners compete against each other. The impact of these differences must be negotiated, yet there is neither a provision nor framework for negotiation set forth in headquarters policy. The challenge of negotiating, particularly between regulator and regulated community, exacerbates the lack of certainty and timeliness that the commercial port sector seeks.

We would also like to highlight continuing concerns and confusion over what are reimbursable services and equipment per CBP. Congress has not adequately supported CBP with funding for many years and

instead has encouraged the agency to seek “donations” and “reimbursable services agreements” from entities at the ports of entry, as was referenced with the 559 program.

However, in recent years there has been a considerable cause of confusion and contention between ports/terminals and CBP in what is CBP’s inherent responsibility regarding operations and services. What concerns the ports and terminal operators alike, when confronted on reimbursable issues, the CBP regional office and headquarters provide different answers and refer ports back to the other CBP office. This delay in resolving issues inevitably ends up costing ports more in time lost and in the amount they must pay out for services and items not originally budgeted.

This also includes rightsizing inspection facilities. CBP issues specifications for and is required to approve all federal inspection facilities. 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 seems to be little concern for budget overruns or timely planning in CBP requests.

Finally, cruises are often not a priority for CBP inspections and can be a potential terrorist target. Seasonal cruises, like those in Maine and on the Great Lakes suffer from not getting service from CBP or from threats that inspectors will not be provided for new or smaller cruise operations. The cost of building a federal inspection facility is far too expensive for smaller regional ports that are ports of call in certain seasons, but not year-round, such as in the Great Lakes and the Northeast.

Again, there is a partnership between CBP, representing the federal government, and the local ports and terminals. Ports and terminals provide CBP facilities and space, without compensation. Generally, the relationships at the local level work well, but it should be made clear, especially to CBP headquarters, that it should not be a one-sided relationship in the seaports where CBP dictates terms, without question.

Recommendation: CBP should 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. Only Congress can ensure CBP provides such a framework and exercise oversight of CBP’s use of the authority. AAPA and NAWE continue to be available to assist in developing such a framework in representation of our members.

CBP Business Development

Much of the supply chain demands begin with business development initiatives led by ports and terminal operators. For new business to come to ports and terminals, there must be assurances that infrastructure needs as well as federal staffing requirements will be met for a new line of business to commit to a port or region. CBP’s answer often has been for the ports to “sign blank checks” in some form or another.

Recommendation: CBP’s strategy must address the growth of global commerce into the United States. The strategy should include better coordination between CBP and ports to provide services in support of anticipated increased freight volume. CBP should designate a specific office that will work directly with ports on establishing new business lines.

II. Port Security Grant Program

The Administration's FY 2018 budget proposal to cut port security grants by 52 percent to \$48 million is cause for great concern. The Port Security Grant Program (PSGP) is a vital tool and funding source for ongoing security improvements for our nation's gateways and the supply chain. Since 9/11, the PSGP has been an important component in helping seaports harden security and protect these vital transportation hubs and maritime borders. These resources assist in fulfilling the DHS mission and have been instrumental in enabling ports and terminal operators to fill the security gaps that are not always addressed by CBP and others.

Recommendation: Fully fund the Port Security Grant Program. At a minimum, we recommend level funding for this program at \$100 million, although this level is 75 percent lower than the \$400 million called for in authorization legislation, which we have supported in the past. We also urge the Congress to continue to maintain management and control of this program at the federal level.

Classified Briefings

Port security leadership must have access to complete and timely information that could impact their threat environment and help drive operational decision-making for port security assets as well as influence strategic security program development. Ports are critical infrastructure, vital components to our national economy and local communities. Because of their importance both nationally and locally, ports have long been identified as potential targets. Through the Area Maritime Security Committees, PSGP and First Responder programs, ports have an excellent and proactive relationship with local law enforcement. However, with potential threats emanating overseas, ports and their security leadership need to have appropriate security clearances and be cued into the national security apparatus.

Recommendations:

Security Clearance. We recommend that port security directors and other appropriate port security leaders be processed and awarded a secret level security clearance by DHS.

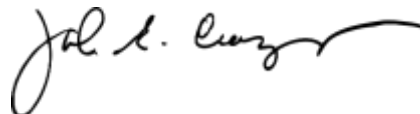
Classified Briefings. We recommend that Area Maritime Security Committees, port security directors and port security leaders be included in monthly classified briefings, currently provided to local and state law enforcement agencies by designated and responsible federal sources.

Thank you for your engagement on these issues. We would be happy to meet with you directly on these issues.

Sincerely,



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American Association of Port Authorities (AAPA)



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