

April 3, 2019

The Honorable Shelley Moore Capito
Chairwoman
Senate Committee on Appropriations
Subcommittee on Homeland Security
SD-131 Dirksen Senate Office Building
Washington, DC 20510
c/o Adam Telle

The Honorable Lucille Roybal-Allard
Chairwoman
House Committee on Appropriations
Subcommittee on Homeland Security
2006 Rayburn House Office Building
Washington, DC 20515
c/o Derek Newby

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 Chuck Fleischmann
Ranking Member
House Committee on Appropriations
Subcommittee on Homeland Security
1016 Longworth House Office Building
Washington, DC 20515
c/o Donna Shahbaz

RE: AAPA FY 2020 Homeland Security Appropriations Priorities

Dear Chairwoman Capito, Chairwoman Roybal-Allard and Ranking Members Tester and Fleischmann,

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. As you begin work on the FY 2020 Homeland Security Appropriation bills, 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 and to raise concerns regarding CBP facility requests to port authorities.

AAPA appreciates the Appropriations Committees' continued support for this vital program. In FY 2020, AAPA strongly supports funding the Port Security Grant Program (PSGP) at \$400 million.

Cargo activities at our nation's ports account for over a quarter of our nation's GDP. It is important for the Committee 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. 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.

The AAPA State of Freight IV Port Security Grant Program Report, published last year, 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 port authorities are not even applying for this funding because the number of public sector grant awards within the program has increased greatly over the past few years, or it is perceived to be so. We recommend that FEMA, starting with the FY 2020 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.

CBP Staffing

AAPA recommends that a minimum of 600 new CBP officers be hired annually, above the current annual attrition rate of 700 CBP officers. 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)

To address a shortage of staff and funds, Congress authorized a Section 559 program to fill a temporary need 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.

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 develop a framework in which different marine port operations, or business models, are considered when establishing the costs of non-funded services or equipment instead of a one-size-fits-all approach. 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 by CBP for budget overruns or timely planning in CBP requests.

Unfortunately, the trend continues with no end in sight. In the past several months alone, two ports, one on the east coast and one on the west coast, have raised concerns about regional CBP officials requesting or 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 requests a report in the final FY 2020 Homeland Security appropriations bill, or before, requiring that within 30 days of enactment, the CBP commissioner documents 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 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 and continued support on the 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 do not hesitate to contact me if you have questions.

Sincerely,



Kurt J. Nagle
President & CEO

cc: The Honorable Nancy Pelosi, Speaker, U.S. House of Representatives
The Honorable Kevin McCarthy, Minority Leader, U.S. House of Representatives
The Honorable Mitch McConnell, Senate Majority Leader
The Honorable Charles Schumer, Senate Minority Leader