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2157 RAYBURN HOUSE OFFICE BUILDING

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MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
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MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

FROM: Doug Ose



SUBJECT: Briefing Memorandum for April 24, 2003 Field Hearing, "What Regulations are Needed to Ensure Port Security?"

On Thursday, April 24, 2003, at 10:00 a.m., the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a field hearing on port security. It will be in the Board Meeting Room of the Port of Los Angeles Administration Building, which is located at 425 South Palos Verdes Street in San Pedro, California. The hearing is entitled, "What Regulations are Needed to Ensure Port Security?" Federal regulations govern the conduct of non-Federal parties.

After the tragic terrorist events of September 11, 2001, both houses of Congress initially focused on air security. On November 19th, the President signed the Aviation and Transportation Security Act (P.L. 107-71). Section 101(l) of this law established "emergency procedures" for the Department of Transportation (DOT) to issue interim final regulations without the usual opportunity for public notice and comment, as provided in the Administrative Procedure Act. As a consequence, to ensure Congressional and public input into the regulatory decisionmaking process, this Subcommittee held a November 27th hearing, entitled, "What Regulations are Needed to Ensure Air Security?"

During 2002, both houses sought a legislative solution to strengthen port security. On November 25, 2002, the President signed the Maritime Transportation Security Act of 2002 (P.L., 107-295). Title I, Maritime Transportation Security, of this law includes Section 102, Port Security. This law similarly provides for some interim final regulations without any public notice and comment. These include three interim final rules by June 30, 2003 on anti-terrorism plans for port security, facility security, and vessel security, and other rules to follow, such as for transportation security cards. Section 108 of the law authorizes the Customs Service to issue a rule requiring that cargo manifest information for inbound and outbound shipments be provided electronically prior to the arrival or departure of the cargo.

The hearing will examine what Federal regulations are needed to ensure port security for various aspects, such as security of U.S. and foreign ports, facility security, vessel security, cargo (containers and perishables) identification and screening, and transportation security cards and background checks. The Subcommittee will hear from the Port of Los Angeles, a representative of vessel owners and terminal operators, a large international container shipper, an international shipper of fresh produce, the California trucking industry since large numbers of trucks move in and out of ports, and unionized port workers.

A June 29, 2002 National Journal article, entitled "Port Insecurity," stated that DOT Secretary Mineta "called improving security at the nation's ports his top priority." It also stated that "many experts call the most glaring gap in American's defenses - the seaports." On August 5th, the General Accounting Office (GAO) testified that "an effective port security environment may be many years away." An August 10th National Journal article included an "Are We Safer" Report Card, which rated Cargo Containers a D. The bottom line is that the maritime transportation system could be used by terrorists to smuggle personnel, weapons of mass destruction, or other dangerous materials into the United States. And, ships in U.S. ports could be attacked by terrorists. A large-scale terrorist attack at a U.S. port could not only cause widespread damage but also seriously affect the maritime trading system, disrupting U.S. and global commerce.

The new Act raises questions about the right balance between: (a) increasing port security while not impeding the flow of commerce and trade, (b) standard versus port-specific security measures, and (c) the roles of governmental agencies and private industry. Two other key questions are: (d) how the United States should pursue higher standards for port security abroad, and (e) how to generate funds for improved port security here and abroad. Also, unlike the November 2001 air transportation security law, the November 2002 maritime transportation security law does not establish firm deadlines for some key provisions.

The U.S. maritime system includes more than 300 ports with more than 3,700 cargo and passenger terminals. The top 25 ports account for 98 percent of the more than 6 million container shipments entering U.S. ports yearly. Most ships calling U.S. ports are foreign-owned and crewed; less than 3 percent of U.S. overseas trade is carried on U.S.-flag vessels. The U.S. is the world's leading maritime trading nation and its maritime trade accounts for 25 percent of its U.S. Gross Domestic Product (GDP) – which is up from 11 percent in 1970.

Many Federal departments and agencies have a role in port security, including the new Department of Homeland Security (DHS) – e.g., the Coast Guard (transferred from DOT), Customs Service (transferred from Treasury), Transportation Security Administration (TSA) (also transferred from DOT), Immigration and Naturalization Service (INS) (transferred from Justice), and Animal and Plant Health Inspection Service (APHIS) (transferred from Agriculture) – and the Departments of Commerce, Defense, Justice (e.g., the Drug Enforcement Administration and Federal Bureau of Investigation), and Transportation (primarily the Maritime

Administration, also known as MARAD). The two agencies with the most presence are the Coast Guard and the Customs Service. Since September 11, 2001, both have sought improved and timelier information so that they can better evaluate through "profiling" the terrorist risk of ships, cargo, passengers or crew destined for the U.S., and decide which to target for closer inspection.

In October 2001, the Coast Guard issued a temporary rule (which was finalized in February 2003), which changed the 24-hour advance Notice of Arrival (NOA) to a 96-hour NOA. The NOA now includes detailed information on the cargo, crew, passengers, and the vessel. In October 2002, the Customs Service issued a final rule requiring 24-hour advance information before cargo is loaded at a foreign port onto a U.S.-bound vessel; previously, this information was not available until the ship arrived at the U.S. port. In January 2003, the INS issued a proposed rule requiring all passengers and crews departing from or arriving at U.S. ports to submit additional information. Attached is a chart showing key Federal agency documents - including the key phases for these three rulemakings - published in the Federal Register from September 11, 2001 to present.

The chart also mentions two Customs Service initiatives that are part of Operation Safe Commerce. In January 2002, Customs initiated a Container Security Initiative (CSI), where U.S. Customs inspectors pre-screen U.S.-bound containers at major foreign ports to identify high-risk containers. Another aspect of CSI is the development of smart and secure containers. In April 2002, Customs initiated the Customs-Trade Partnership Against Terrorism (C-TPAT), which offers importers expedited processing of cargo if they secure their entire supply chain and are certified by the Customs Service.

Since September 2001, the Customs Service only inspects about 2 to 5 percent (up from 2 percent) of imported and 1 percent (same as before) of exported containers. TSA is studying credentialing port workers. The Coast Guard is also promoting the adoption of more stringent international standards for maritime security under the leadership of the International Maritime Organization (IMO), which is a branch of the United Nations (UN). Key questions are whether the Federal government should require a core, minimum or baseline set of requirements (e.g., for training, drills, fencing, cameras, lighting, and guards) for non-Federal private parties or more prescriptive requirements, and if the Federal government should allow self-certification by non-Federal private parties.

The Port of Los Angeles is the busiest port in the U.S. and the seventh busiest in the world. More than 3,000 vessels move through the port yearly. The port has 27 major cargo terminals. And, it is the fourth busiest cruise port in the U.S.

The invited witnesses for the hearing are: Larry Keller, Executive Director, Port of Los Angeles; Timothy Parker, Executive Secretary, Steamship Association of Southern California (comprised of vessel owners, agents, terminal operators, and stevedoring companies); John Ochs, Security Manager, Maersk Sealand, Ltd. (largest container shipper in the Port of Los Angeles);

Rob Marshall-Johns, Director of Operations and Quality Control, The Oppenheimer Group (shipper of fresh produce); Stephanie Williams, Vice President, California Trucking Association; and, Dr. Domenick Miretti, Senior Liaison, Ports of Los Angeles and Long Beach, International Longshore and Warehouse Union (ILWU).

Attachment

Key Federal Agency Documents in Federal Register: 9/11/2001 – 4/7/2003

Date	Agency	Document Type	Subject
2/28/03	Coast Guard	Final rule (33 CFR § 160)	Notification of Arrival (NOA) for arrivals to & departures from US ports – see 10/4/01 below
1/3/03	INS	Proposed rule (8 CFR §§ 217, 231 & 251)	electronic Manifest Requirements for vessel arrivals & departures, including crew & passenger info
12/30/02	Coast Guard	Notice of 7 public meetings	on subjects to be covered in 3 Interim final rules (due 6/30/03) on port security, facility security, & vessel security
12/17/02	Customs Service	Notice	modifications to test of Vessel Automated Manifest System (AMS) for electronic cargo info 24 hours in advance, effective 12/2/02 for test participants
11/20/02	TSA	Notice for public comments	on criteria for projects under Operation Safe Commerce (which includes Customs-Trade Partnership Against Terrorism or C-TPAT & Container Security Initiative or CSI)
10/31/02	Customs Service	Final rule (19 CFR §§ 4, 113 & 178)	advance Vessel Cargo Declaration 24 hours before cargo is laden aboard a vessel in a foreign port for transport to US
8/8/02	Customs Service	Proposed rule (19 CFR §§ 4 & 113)	advance Vessel Cargo Declaration 24 hours before cargo is laden aboard a vessel in a foreign port for transport to US
8/7/02	Coast Guard	Clarification of rule (33 CFR § 6 & 125)	Maritime Identification Credentials for access to ports & vessels in ports
6/19/02	Coast Guard	Proposed rule (33 CFR § 160)	NOA
10/4/01	Coast Guard (33 CFR § 160)	Temporary rule (33 CFR § 160)	NOA – from 24 to 96 hours prior to arrival at US port, including cargo, crew & passenger info