

Secretary

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



Homeland
Security

August 30, 2019

The Honorable (b) (6), (b) (7)(C)
Governor, Commonwealth of Puerto Rico
Avenida Juan Ponce de León
San Juan Antiguo, PR 00901

Dear (b) (6), (b) (7)(C) :

This letter responds to Puerto Rico's application and request for a waiver of the Jones Act, dated December 20, 2018, submitted jointly by (b) (6), (b) (7)(C)

An identical copy of this letter is being simultaneously transmitted to them. I also acknowledge and am aware of the meeting that various representatives on behalf of Puerto Rico, and the Puerto Rico Electric Power Authority had with U.S. Customs and Border Protection (CBP) on March 5, 2019, in furtherance of Puerto Rico's waiver request.

The Department of Homeland Security (DHS) appreciates Puerto Rico's engagement with the Department relating to the request to waive the statutory requirements for non-coastwise-qualified vessels to transport liquefied natural gas (LNG) from U.S. domestic ports to power plants in Puerto Rico to support Puerto Rico's energy needs. For the following reasons, however, I have determined that any potential grant of Puerto Rico's request for a waiver of the Jones Act is premature.

Under the Jones Act (46 U.S.C. § 55102) no merchandise may be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a coastwise-qualified vessel, that is, a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise laws administered by CBP can only be waived under the authority provided in 46 U.S.C. § 501. This statute provides in pertinent part:

When the head of an agency responsible for the administration of the navigation or vessel-inspection laws considers it necessary in the interest of national defense, the individual, following a determination by the Maritime Administrator, acting in the Administrator's capacity as Director, National Shipping Authority, of the non-availability of qualified United States flag capacity to meet national defense requirements, may waive compliance with those laws to the extent, in the manner, and on the terms the individual, in consultation with the Administrator, acting in that capacity, prescribes.

The Department has carefully reviewed Puerto Rico's request for a waiver of the Jones Act. After consideration of input received from the Department of Defense, Department of Energy, and the Maritime Administration, representatives from CBP and Puerto Rico met to further discuss Puerto Rico's request. That meeting highlighted the various challenges facing all stakeholders related to this request for a waiver.

As you know, the Department has never granted a years-long waiver of the Jones Act, and Puerto Rico's request for a ten-year waiver is unprecedented. We believe this is because of the temporal limitations inherent in the statutory scheme. Specifically, the foundational statutory requirements authorizing issuance of a waiver are determinations that there is no U.S.-flag, coastwise-qualified vessel capacity and that transportation of the merchandise is in the interests of national defense. The longer the time horizon contemplated by a waiver request, the more difficult it is to assess both of these requirements.

As required by the statute, DHS engaged in discussions with the Maritime Administration on the potential availability of U.S.-flag, coastwise-qualified vessels to perform the potential transportations described in Puerto Rico's request. The Maritime Administration advised that, based upon the decade-long time horizon contemplated, it is impossible to assess whether there will be U.S.-flag, coastwise-qualified vessel capacity to handle any aspects of the contemplated transportations at issue. Furthermore, even if a waiver was granted, a periodic and continual review of U.S.-flag, coastwise-qualified vessel capacity would have to be performed in conjunction with accurate information about the requested movement of merchandise. Moreover, the Maritime Administration advises that there is statutory authority to reflag existing LNG vessels to authorize LNG movements to Puerto Rico that would address any possible deficiencies of the existing U.S.-flag, coastwise-qualified vessel capacity. Section 12120 of Title 46, United States Code, permits a certificate of documentation with a coastwise endorsement to be issued for certain vessels to transport LNG and liquefied petroleum gas to Puerto Rico from other U.S. ports, for vessels that were built foreign before October 19, 1996, or for vessels that were documented under Title 46 before October 19, 1996 and even if such vessels were placed under a foreign registry to be subsequently re-documented under Title 46. *See* 46 U.S.C. § 12120. For these reasons, I have determined that granting a long-term waiver is not appropriate given the information currently available.

However, as discussed in the meetings between CBP and Puerto Rico representatives, DHS believes a framework could be explored for the recurring evaluation of individual waiver requests for transportation of LNG shipments from U.S. domestic ports to each power plant in Puerto Rico on a case-by-case basis. This framework would enable the Maritime Administration to efficiently consider a request individually and make a determination based upon the Maritime Administration's survey of the maritime industry regarding the availability of coastwise-qualified vessels to meet the needs of the request. To ensure there is no confusion on exploring such a framework, the Department is not signaling that the establishment of such a framework would guarantee a waiver of the Jones Act, but it would allow for much greater specificity in determining whether coastwise-qualified vessels are available to perform the transportation of LNG, maximize the use of coastwise-qualified vessels, and allow for a timely consideration of the request well in advance of the proposed transportation. DHS also cautions that such a framework would require a finding that such shipments are necessary in the interests of national

(b) (6), (b) (7)(C)


Page 3

defense, as commanded by the statute. Those determinations would require extensive coordination with the Department of Defense and the Department of Energy.

Based on the Department's review of the matter, I have determined that a waiver of the Jones Act is not warranted at this time.

Sincerely,

(b)(6); (b)(7)(C)


Kevin K. McAleenan
Acting Secretary

cc:

(b) (6), (b) (7)(C)