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Congress of the United States
House of Representatives
Washington, DC 20515-5400

March 20, 2015

The Honorable R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Avenue, NW
Washington, DC 20229

The Honorable Paul N. Jaenichen, Sr.
Administrator
U.S. Maritime Administration
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Commissioner Kerlikowske and Administrator Jaenichen:

My constituents are expressing increased concern about the application of the Jones Act to Puerto Rico in light of the recent decision by a longstanding Jones Act carrier, Horizon Lines, Inc., to withdraw from the Puerto Rico market. I write to invite senior officials from U.S. Customs and Border Protection (CBP) and the Maritime Administration (MARAD) to attend a forum I will soon convene in Puerto Rico to discuss this situation. I also intend to invite representatives from each of the Jones Act carriers that continue to provide service between the U.S. mainland and Puerto Rico. In addition, I will invite Puerto Rico government officials, business leaders, manufacturers, farmers, economists, and other stakeholders.

As you know, the Jones Act generally requires that all maritime transport of cargo between the U.S. mainland and the U.S. territory of Puerto Rico be carried on vessels built in the United States, owned by U.S. citizens, and operated by U.S. citizen crews. Since its enactment nearly a century ago, the Jones Act has always applied to Puerto Rico. However, a 1996 federal law provided a limited exception to the Jones Act in the case of Puerto Rico, enabling a narrow universe of vessels to transport liquified natural gas and liquified petroleum gas between the U.S. mainland and Puerto Rico, namely (1) vessels built outside of the United States prior to October 1996 and (2) vessels built in the United States prior to October 1996 that are not registered in the United States. In 2013, based on the findings contained in a U.S. Government Accountability Office (GAO) study that I requested, I introduced legislation—H.R. 2838, the *Puerto Rico Interstate Commerce Improvement Act*—to update and expand this 1996 exception. It should be noted that the 1996 exception has never been used because no LNG export terminals currently operate in the lower 48 contiguous states, and the first such terminal is not scheduled to begin operations until later this year. Apart from the 1996 exception, the Jones Act applies in full to all containerized cargo and bulk cargo transported between the U.S. mainland and Puerto Rico.

Whether one is a proponent or a critic of the Jones Act, there can be no doubt that the Jones Act only serves its intended purpose if there are sufficient Jones Act-compliant vessels ready, willing and able to transport cargo between U.S. ports. As should be expected, many of my constituents

are concerned that the departure of Horizon Lines will disrupt the marketplace, making it more onerous, time-consuming and costly to bring U.S. domestic products into Puerto Rico. Indeed, numerous businesses and consumers have already reported such disruption. At the same time, the remaining Jones Act carriers have indicated that they intend to increase the frequency and volume of their service to Puerto Rico and have requested meetings with my office to discuss the details of their plans.

My constituents have raised important questions and concerns that require thoughtful and detailed answers from subject-matter experts. The forum I will convene is designed to facilitate this dialogue. According to GAO, as of June 2011, Horizon Lines transported products on a weekly basis between Puerto Rico and three U.S. ports: Elizabeth, New Jersey; Jacksonville, Florida; and Houston, Texas. Horizon Lines represented about 30 percent of the market share in Puerto Rico, and provided 38 percent (2,340 forty-foot equivalent units) of the total Jones Act capacity for Puerto Rico. My constituents are concerned about whether the remaining Jones Act carriers can fill the substantial gap left by Horizon's departure, particularly in light of the fact that Horizon was the only non-barge carrier that provided direct service between New Jersey and Puerto Rico. My constituents want to understand whether these carriers can provide substantially equivalent service or if this service will vary in important respects, including in terms of the timing and cost of delivery.

This forum will also allow for a discussion about whether there are particular products that, as a result of Horizon's departure, will no longer be available in Puerto Rico, will no longer be delivered on a timely basis, or will only be available at higher cost.

Finally, current law authorizes the federal government to grant an administrative waiver to the Jones Act when such a waiver "is in the interest of national defense." This forum will provide your agencies an opportunity to offer guidance regarding the legal procedure by which an individual or organization in Puerto Rico can request an administrative waiver from the Jones Act; the level of evidence that would need to be provided in order for the federal government to grant a waiver; and the respective roles of the U.S. Department of Defense, the U.S. Department of Homeland Security (namely, CBP), and the U.S. Department of Transportation (namely, MARAD) in the waiver process.

It is my hope that the federal government and the remaining Jones Act carriers can provide answers to my constituents' reasonable questions, and I intend to provide the space and opportunity for this interchange to occur. My office will continue to work with your staffs to make logistical arrangements for the planned forum.

Sincerely,



Pedro R. Pierluisi
Member of Congress