

Making Sense of the Jones Act and the Jones Act Waiver for Puerto Rico

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1. **What is the Jones Act?** The Jones Act, as commonly known, is part of the Merchant Shipping Act of 1920, 41 Stat. 988 (1920). The act was sponsored by Senator Wesley R. Jones, from Washington State, which is how it acquired its name. The act has been amended numerous times and in addition to shipping regulations, also provides a negligence cause of action for seafarers against their employers, similar to the Federal Employers Liability Act governing railroad workers. Section 27 of the act that related to coastwise shipping regulation sets standards for vessels transporting goods between ports of the United States. In addition to the 50 states, Puerto Rico and other United States territories are covered at least in some part by this law.

There are four main requirements for vessels carrying goods between ports of the United States. The vessels must be:

- a. owned by United States companies that are controlled by United States citizens with at least 75 percent United States percent ownership;
- b. at least 75 percent crewed by United States citizens;
- c. built (or substantially rebuilt) in the United States; and
- d. documented in the United States.

These types of requirements for shipping goods within a country are known as cabotage laws and have been enacted in various forms by Congress since the early days of the nation. First Cong., sess. 1, ch. 11, §1 (1789). Over 75% of the countries in the world have some sort of cabotage laws that regulate shipping within the ports of those countries.

2. **Does the Jones Act prevent foreign vessels from delivering goods to Puerto Rico?** No. The act only regulates goods being transported from another port of the United States with Puerto Rico. Approximately 8,000 foreign vessels make over 51,000 calls on ports of the United States each year. *Protecting America's Ports*, Taylor & Kaufman, National Institute of Justice Journal, Issue 262, p.32. Foreign vessels regularly call upon the various ports of Puerto Rico delivering and receiving goods at these ports in trade with other foreign ports. Currently nearly two thirds of the vessels calling on Puerto Rico are foreign vessels. Maritime Labor Alliance, *Statement of Support*, September 29, 2017. The act does nothing to restrict those shipments by foreign vessels from other foreign ports.
3. **What is the purpose of the Jones Act?** As noted earlier, cabotage laws have been around since the beginning days of our nation. These laws are designed to promote and protect United States shipping interests, maritime commerce, and ports. The act came about after World War I in reaction to the destruction of U.S. merchant vessels by the German navy. The national security

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concerns that ushered in the law, are still relevant, according to the shipping industry. Nations want their naval defense ships built in their own country and a strong commercial shipbuilding community is required to support those efforts. Maritime countries seek to regulate ownership of their ports, maritime facilities and assets as a matter of their individual national interests. The act encourages investment in U.S. shipbuilding, maritime facilities and promotes the U.S. merchant marine, according to its proponents.

4. **Is there a shortage of U.S. ships to deliver goods to Puerto Rico?** No. The difficulty in aid distribution since the hurricanes has been primarily with the land based logistics and the destruction of the infrastructure on the island. There are presently three primary ocean carriers that regularly deliver goods to Puerto Rico from the United States mainland: Tote Maritime, Crowley Maritime, and Trailer Bridge. All of these ocean carriers are based in Jacksonville, Florida, which is the U.S. mainland port that delivers the majority of goods to the island from the U.S. mainland. These companies each have at least weekly to twice weekly schedules by both ships and tug-barge units. In total there are fifteen U.S. ships and tug-barge units that regularly call on Puerto Rico from the United States. These U.S. ships deliver a variety of goods, equipment, and commodities to Puerto Rico, but almost all of the fuel consumed on the island comes to Puerto Rico by foreign vessels. These U.S. carriers have invested billions of dollars in capital to be more efficient and environmentally friendly in servicing Puerto Rico, including building the world's first LNG fueled container ships that are dedicated to serving Puerto Rico.
5. **What does a "Jones Act Waiver" for Puerto Rico really mean?** By temporarily lifting the regulations of the Jones Act, foreign vessels can deliver goods to Puerto Rico from other ports of the United States. Again, foreign vessels already deliver over 60% of the goods and equipment consumed on Puerto Rico, so lifting the waiver opens up the less than 40% of total goods that are shipped to Puerto Rico from the United States mainland. A foreign vessel must still apply for the exemption and is required to provide certain information to the U.S. Customs and Border Patrol before attempting to take advantage of the exemption. See U.S. Customs & Border Patrol Statements, CSMS# 17-000562 - Jones Act Waiver Guidance Update; CSMS# 17-000563 - Update for Vessel Entrance and Cargo Clearance of Jones Act waivers. Foreign vessels delivering goods from other foreign ports are not affected by the waiver and have been continuing to call upon Puerto Rico since Hurricane Maria impacted the island. The "Jones Act Waiver" for Puerto Rico follows the pattern of other waivers granted to Texas ports and Florida ports in the aftermath of Hurricanes Harvey and Irma, respectively. There are no current statistics to indicate its level of effectiveness.

Trade with Puerto Rico is commonly referred to as "one-way trade" because in general, for every 4 fully loaded containers that are shipped to the island, only one returns full with goods being shipped off the island. Practical considerations demonstrate the issues facing foreign vessels that do not regularly call upon Puerto Rico from the United States. A current price quotes from a foreign ocean carrier to ship a standard ocean container of goods from Jacksonville, Florida to San Juan, Puerto Rico on a foreign vessel are competitive. However, because the foreign carrier does not have a dedicated service to Puerto Rico, the delivery time was estimated at 19 days, much longer than the standard U.S. vessels' delivery times of 2-3 days. Statistics taken from U.S. Propeller Club of Jacksonville, CEO Spotlight Luncheon, October 4, 2017.