Jones Act Shipping Rules Relaxed Under New 60-Day Waiver

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Overview

The Trump administration announced a temporary waiver of the Jones Act on Wednesday 18 March, meaning that foreign-flagged vessels will be permitted to transport goods, such as fertiliser, natural gas, coal and oil, between US ports. The announcement, which was confirmed by White House Press Secretary Karoline Leavitt, revealed a 60-day waiver of the Jones Act in response to energy market disruptions and surging prices caused by the ongoing conflict in the Middle East.

What is the Jones Act?

Formally known as the Merchant Marine Act 1920, the Jones Act (46 U.S.C. § 55102) was first introduced by Congress to rebuild the US merchant marine during the First World War. The act governs cabotage, otherwise known as coastwise trade, and requires all goods transported by water between domestic US ports to be transported by vessels which are US-built, flagged, owned and crewed by US citizens and/or US permanent residents (subject to limited exceptions). The Jones Act seeks to provide protection to the US domestic maritime industry from foreign shipyard competitors, foreign carriers and heightening domestic security concerns.

How are Jones Act waivers obtained?

Procedures for obtaining waivers are codified in 46 U.S.C. § 501, which establishes two distinct waiver tracks. Under 46 U.S.C. § 501(a) a waiver may be granted only if it is deemed "*necessary in the interest of national defence to address an immediate adverse effect on military operations*" by the secretary of defence (currently known as the secretary of war), with the words "*to address an immediate adverse effect on military operations*" added by Congress in 2021 in an attempt to tighten the standards required to justify putting in place a waiver.

Within 24 hours of making the request, the secretary of defence must submit to certain Congressional committees a written explanation of the circumstances, including confirmation that there are insufficient qualified vessels to meet the needs of national defence without such a waiver. Under the 46 U.S.C. § 501(b) track (which applies to non-Department of Defence requests), the president must determine that the waiver is "*necessary in the interest of national defence*" but does not include the additional congressional wording, and it requires a finding by the maritime administrator in the US Department of Transportation that Jones Act-qualified vessels are not sufficiently available to meet national defence requirements and will need to include significant details, including the description of cargo and other information relating to the vessels which are intended to be used. The current Jones Act waiver, issued under U.S.C. § 501(a), is set to officially expire on 17 May 2026. However, the official written justification or request for the waiver has not been published, which is consistent with waivers issued by the secretary of defence, which are not required to be notified publicly.

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Rationale for the waiver

Explaining the decision, Leavitt stated that the Jones Act waiver would help "*mitigate the short-term disruptions to the oil market*" and "*allow vital resources like oil, natural gas, fertilizer and coal to flow freely to US ports for sixty days*", whilst US Energy Secretary Chris Wright concurred, stating that "*by temporarily waiving the Jones Act, he* [the president] *is ensuring that oil and other energy resources flow to Americans across the country, even during times of disruption. This will help ease short-term price impacts in the oil market*". On the contrary, the Centre for American Progress, a non-partisan policy institute, estimated that this waiver would only decrease the price of gas on the US East Coast by three cents and create a possible increase in costs for those situated on the Gulf Coast. In addition, the administration's justification, centred on mitigating short-term disruptions to energy markets and reducing fuel costs, potentially reveals the waiver's true purpose to be economic rather than military, and the unprecedented 60-day duration, which is notably longer than any previous waivers, further heightens its vulnerability to legal challenge.

Shipping market responses to the waiver

Shipping market observers are also largely divided on the waiver's impact. Supporters of the Jones Act contend that the 60-day waiver increases threats to US maritime security, weakens military readiness and most crucially, they are concerned with the potential risk of the waiver being abused and resulting in the unnecessary displacement of American workers or American companies. Critics, however, point to the limited number of Jones Act-compliant vessels (estimated at fewer than 100) available to meet demand for vessels in times of major disruption or crisis. The move to introduce the waiver is therefore considered to be a possible option to alleviate growing supply and price pressures by enabling foreign-flagged vessels to access US ports, particularly as external factors continue to disrupt Brent crude and gas markets. Early data suggests that the waiver has had limited effect, with crude oil, refined products and biofuel shipments between domestic US ports remaining practically unchanged since February, at approximately 1.37 million barrels per day,[1] whilst US exports of refined products hit a record high in March, as demand in Europe, Asia and Africa continues to soar. Foreign vessel owners may also be reluctant to capitalise on the introduction of the waiver, on the basis that a short waiver period of only 60 days is unlikely to be considered commercially attractive or viable to owners looking to re-deploy vessels to US domestic trades.

Ensuring compliance with the waiver regime as a non-US operator

For non-US operators looking to benefit from the waiver, compliance with the waiver regime is of paramount importance. US Customs and Border Protection ("**CBP**") has requested that any member of the trade community who intends to conduct transportation of commodities listed within the Jones Act waiver notify CBP via email and include details such as the vessel name, IMO number, flag and information concerning the ports and dates of departure and arrival. In accordance with 19 U.S.C. § 1434(a)(2) (as implemented in 19 C.F.R. Part 4), any foreign vessel arriving from a domestic port must also file a formal entry regardless of the cargo carried. Therefore, foreign-flagged vessels transporting cargo pursuant to this Jones Act waiver remain subject to vessel entrance and clearance requirements and should use the Vessel Entrance and Clearance System (VECS). Compliance with these steps is crucial, particularly as violations of arrival or entrance reporting requirements may result in the master of a vessel being liable for civil and criminal penalties. In addition, carriers engaging in trade under this Jones Act waiver must provide a paper Inward Cargo Declaration, which amongst other things, should note that the shipment is being made pursuant to the latest Jones Act waiver. In accordance with 46 U.S.C. 501(c), no later than 10 days after the date of conclusion of the voyage of a vessel that is operated

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under this waiver, the owner or operator will also be required to submit a Maritime Administrator report, including a number of details, in particular an explanation as to why the waiver for the vessel was in the interest of national defence.

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[1] According to Kpler data

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