

Waivers of Jones Act Shipping Requirements

September 29, 2017

On September 28, the Trump Administration issued a [temporary waiver](#) of the Jones Act (§27 of the Merchant Marine Act of 1920) to facilitate response to the severe damage caused by Hurricane Maria in Puerto Rico. In recent weeks, the Administration issued similar waivers affecting Texas and Louisiana, following Hurricane Harvey, and affecting Florida, following Hurricane Irma. This CRS Insight is intended to clarify the process and requirements for obtaining waivers of this law.

The Jones Act requires that vessels transporting goods or passengers between U.S. points be built in the United States, at least 75% owned by U.S. citizens, and mostly crewed by U.S. citizens. The U.S. Virgin Islands is [exempted](#) from the law (as is American Samoa and the Northern Mariana Islands), while Puerto Rico is exempted for passengers but not for cargo.

The Jones Act requirements may constrain the [available supply of ships](#) at particular times and places in the United States, which is why the requirements frequently have been waived temporarily in response to major hurricanes. For instance, in response to Hurricane Katrina in September 2005, an [18-day waiver](#) was issued to allow foreign-flag tankers to move petroleum and petroleum products along the Gulf Coast because pipeline facilities in the region were without power. Shortly thereafter, a waiver was granted in response to Hurricane Rita, also for the purpose of moving fuel. In response to Superstorm Sandy in 2012, a waiver lasting about three weeks was granted to move fuel to the Northeast. In July and August 2011, the Jones Act was waived during a crisis in Libya to allow foreign tankers to ship oil from the U.S. Strategic Petroleum Reserve. These and other waivers are noticed in the *Federal Register*.

Temporary Waivers

Procedures for obtaining waivers to U.S. navigation and vessel-inspection laws, including the Jones Act, are codified at [46 U.S.C. Section 501](#), which specifies that a waiver can be granted only if it is deemed “necessary in the interest of national defense” by the Secretary of Defense or the Secretary of Homeland Security. A waiver issued by the Department of Homeland Security (but not by the Secretary of Defense) requires a finding by the Maritime Administrator in the U.S. Department of Transportation that Jones Act-qualified vessels are not sufficiently available to meet national defense requirements.

The waiver process originated in a 1950 law (P.L. 81-891) that made permanent a temporary waiver enacted in 1942 for World War II (P.L. 77-507, §501). Since 2009, the waiver process has required that the Maritime Administrator is to be consulted as to the extent, manner, and terms of any non-Department of Defense-requested waiver. In 2012, Congress amended the waiver process by providing the Maritime

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Administration with an opportunity to identify actions that could be taken to avoid the need for a waiver (P.L. 112-213, §301).

The waiver granted for Puerto Rico applies to all types of shipping for a 10-day period. But federal regulations (33 C.F.R. §19 and 46 C.F.R. §6) also outline a process for granting a temporary waiver for a particular vessel on a single voyage. A request for an individual vessel waiver can be made by any authorized representative of an agency of the U.S. government or any other interested person (including the master, agent, or owner of the vessel involved). Application is to be made to the Coast Guard or the Customs and Border Protection (agencies within the Department of Homeland Security) in writing, but can be made orally, at least initially, in the case of extreme urgency. The application must outline the facts supporting the national defense need for the waiver. Customs and Border Protection decisions either granting or denying waivers can be found by searching its [Ruling Letters](#). These decisions confirm that waivers are granted only for national defense considerations, not commercial expediency.

Permanent Waivers

In addition to the temporary waivers discussed above, vessels can receive permanent waivers of Jones Act requirements. One type of permanent Jones Act waiver is specific to [small passenger vessels](#). As authorized by the Coast Guard Authorization Act of 1998 (P.L. 105-383, Title V; 46 U.S.C. §12121), the Maritime Administration can waive the U.S.-build requirement of the Jones Act for passenger vessels carrying no more than 12 passengers for hire. However, while a small foreign-built vessel could carry passengers between two U.S. ports, the vessel must still be U.S.-owned and -crewed. The Maritime Administration must determine that granting the waiver will not adversely affect U.S. vessel builders or the business of other operators using U.S.-built vessels. The Maritime Administration publishes a notice in the *Federal Register* when it receives such a request and when it either grants or denies a waiver.

Congress also frequently grants individual vessels permanent waivers from the Jones Act. This most often occurs in legislation reauthorizing the Coast Guard. Typically, only the name of the vessel and its identifying number are indicated in law, so information regarding the rationale for the waiver is not readily available. However, it appears that most such waivers are for small vessels that have little or no commercial impact.

Congress has also enacted some ad hoc waivers, perhaps more accurately described as exemptions, from the Jones Act. In 2011, Congress granted a Jones Act waiver for vessels supporting the 34th America's Cup sailing race (P.L. 112-61). In addition to exempting Puerto Rico from the Jones Act with regard to passenger services (P.L. 98-563, enacted in 1984), Congress exempted the shipping of lumber to Puerto Rico for up to a one-year period (P.L. 87-877, §4) in 1962 to address the ability of U.S. Pacific Northwest lumber suppliers to compete with Canadian suppliers. Congress has also exempted a cruise ship in Hawaii service from the U.S.-build requirement (P.L. 105-56 and P.L. 108-7). Congress permits the Maritime Administration to exempt certain vessels supporting offshore oil drilling in [Alaskan waters](#) from some Jones Act restrictions as well.

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