FOREIGN VESSELS OPERATING UNDER THE JONES ACT WAIVER SHOULD CONSIDER WHAT OTHER US LAWS MAY APPLY

Date: 24 March 2026

US Policy and Regulatory Alert

By: Mark Ruge, Elle Stuart, Darrell L. Conner, Michael S. Heard Snow

The Trump administration's waiver of the nation's domestic cabotage laws under the family of laws known as the Jones Act[1] is highly unusual for both its length (60 days) and its breadth (659 categories of products).[2] While the Jones Act normally requires the use of US-flagged, built, owned, and operated vessels for domestic voyages,[3] this waiver allows foreign-flagged vessels to operate on these routes, creating a critical open question for charterers and other potential users: What US laws will apply to foreign vessels operating under the waiver?

The waiver was issued under 46 U.S.C § 501(a), which permits a waiver "to the extent that the Secretary [of War][4] considers necessary in the interest of national defense to address an immediate adverse effect on military operations." Section 501(a) is limited to only waivers of the "navigation or vessel-inspection laws," including the Jones Act.[5]

So, what about other US laws? For example, are the foreign vessels subject to US tax laws for their income earned on what are by definition US domestic[6] voyages? Likewise, will foreign seafarers operating on vessels calling on the United States be required to obtain visas applicable to those operations? Will the vessel owners ensure that their employees are granted the same labor rights—such as paying US minimum wage—afforded to US mariners? In previous studies, the US Government Accountability Office (GAO) has listed US tax, labor, and employee protection laws among those that could apply if a foreign vessel operated in US domestic commerce.[7] GAO has sometimes referred to these additional US laws as the "cost of compliance" for foreign vessels in US domestic commerce.[8]

US Customs and Border Protection (CBP), the agency responsible for issuing Jones Act waivers, has only provided guidance on the requirements for vessels operating under this particular waiver. No other agency has provided guidance on compliance with any other applicable laws for foreign vessels clearly operating in US domestic trades. In addition, it is not clear what authority, if any, the administration could use to waive other US laws for a foreign vessel operating in perhaps the exact same trades as a US vessel for which those US laws would fully apply.

The issue takes on a particular gravity because since 2021 all foreign vessel operators who transport US domestic cargo under a waiver are required to share detailed information about the voyage with the US Maritime Administration—information that then must be publicly disclosed within 10 days on the US Department of Transportation website.[9] CBP emphasized the need for public reporting in announcing the waiver. This latest waiver will be the first in which public disclosure is mandated by law in this way, creating additional legal exposure for vessel operators or others utilizing the waiver.

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Our Maritime practice group team is closely monitoring these developments and is well positioned to assist clients in navigating this rapidly changing landscape and its uncertainties.

FOOTNOTES

[1] For more background information on the Jones Act refer to the Essential Guide to the Jones Act at: https://www.klgates.com/The-Essential-Guide-to-the-Jones-Act.

[2] CSMS # 68096516 - Implementation of Jones Act Waiver Issued to the Department of War (Mar. 17, 2026), https://content.govdelivery.com/bulletins/gd/USDHSCBP-40f1204?wgt_ref=USDHSCBP_WIDGET_2.

[3] 46 U.S.C. § 55102.

[4] Restoring the United States Department of War, Exec. Order No. 14347, 90 Fed. Reg. 43893 (Sep't 10, 2025).

[5] In addition to the language in the law itself, the title of the section ("Waiver of navigation and vessel-inspection laws") even highlights this limited application.

[6] I.e., transporting merchandise from one point in the United States to another point in the United States.

[7] U.S. GOV'T ACCOUNTABILITY OFF., GAO-04-421, EXEMPTION PROVIDES LIMITED COMPETITIVE ADVANTAGE, BUT BARRIERS TO FURTHER ENTRY UNDER U.S. FLAG REMAIN (2004), https://www.gao.gov/assets/gao-04-421.pdf.

[8] Letter from Gerald L. Dillingham, Assoc. Dir., Transp. Issues, U.S. Gov't Accountability Off., to the Hon. John McCain, Chairman, Senate Comm. on Com., Sci., & Transp., 4 (Mar. 6, 1998), https://www.gao.gov/assets/90/87426.pdf.

[9] 46 U.S.C. § 501(c).

KEY CONTACTS



MARK RUGE
PARTNER AND CHAIR OF THE FIRMWIDE PRO BONO COMMITTEE

WASHINGTON, DC
+1.202.661.6231
MARK.RUGE@KLGATES.COM



DARRELL L. CONNER
GOVERNMENT AFFAIRS COUNSELOR

WASHINGTON, DC
+1.202.661.6220
DARRELL.CONNER@KLGATES.COM



ELLE STUART
PARTNER

WASHINGTON, DC
+1.202.778.9081
ELLE.STUART@KLGATES.COM



MICHAEL S. HEARD SNOW
ASSOCIATE

WASHINGTON, DC
+1.202.778.9318
MICHAEL.HEARDSNOW@KLGATES.COM

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