

Waiving the Jones Act for Hawaii Crude Oil Imports



MARCH 4, 2022

On March 3, 2022, the Grassroot Institute of Hawaii sent an [open letter](#) to President Biden purporting to request a one-year waiver of the Jones Act to permit the use of foreign-flag vessels to transport crude oil from Alaska or the lower 48 states to Hawaii. The request was precipitated by the Russian invasion of the Ukraine since Hawaii's only refinery announced it will stop importing Russian crude oil as its feedstock.

"Jones Act" is a popular term for a set of laws which restrict the transportation of "merchandise" and "passengers" between "points in the United States" as well as reserve certain activities such as "dredging" in U.S. waters to qualified U.S.-flag vessels. There is a separate law stemming from an Executive Order issued by President Franklin Roosevelt shortly after the attack on Pearl Harbor which authorizes the waiver of "navigation or vessel-inspection laws." The U.S. coastwise laws, including the Jones Act, are navigation laws.

The Jones Act either can be waived upon request of the Secretary of Defense or by the Secretary of Homeland Security. A defense request can only be granted if the Secretary of Defense considers it "necessary in the interest of national defense to address an immediate effect on military operations." The phrase "address an immediate effect on military operations" was added on January 1, 2021 presumably to make it more difficult for a DoD waiver to be granted.

A DHS waiver also requires a finding that it is in the "interest of national defense" without the military operations limitation. However, a DHS waiver is limited by law to 10 days and can only be extended to a maximum of 45 days. Again, this limitation was added on January 1, 2021. In addition, for DHS to issue a waiver, the U.S. Maritime Administration must first determine that there is inadequate U.S.-flag capacity to meet the need for which a waiver was requested.

The Grassroots Institute letter, which was not directed to either DoD or DHS, claims that "it is too expensive to import oil from U.S. sources" because of the cost of Jones Act qualified vessels. Cost is not a variable that can be considered under the current waiver law. The letter also makes a national defense argument indirectly by stating that "the requirements of the Jones Act. . . pose a threat to America's national security." It is not clear whether that is an adequate justification, but it is clear that a one-year waiver is not authorized unless it can be argued that the situation has a negative "effect on military operations."

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