



**Homeland
Security**

DEPARTMENT OF HOMELAND SECURITY

Waiver of Compliance with Navigation Laws

Hurricane Sandy struck the East Coast on October 29, 2012 causing significant damage to the petroleum refining and distribution sector—including pipelines, refineries, bulk terminals, and ports. In light of Hurricane Sandy's impact on the affected region's energy needs, the Department of Energy (DOE) has recommended that the Department of Homeland Security waive the requirements of the Jones Act to facilitate the transportation of the necessary volume of petroleum products.

The Jones Act, 46 United States Code (U.S.C.) § 55102, states "a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port" unless the vessel was built in and documented under the laws of the United States and is wholly owned by persons who are citizens of the United States. Such a vessel, after obtaining a coastwise endorsement from the U.S. Coast Guard, is "coastwise-qualified." The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

The navigation laws, including the coastwise laws, can only be waived under the authority provided by 46 U.S.C. § 501. That statute provides in relevant part that the Secretary of Homeland Security may grant a waiver of the Jones Act requirements only if (1) the Maritime Administrator (MarAd) at the Department of Transportation determines there is no qualified U.S.-flagged vessel available and (2) the waiver is "necessary in the interest of national defense." 46 U.S.C. § 501(b).

In accordance with the provisions of 46 U.S.C. § 501(b) the Department of Homeland Security has consulted with MarAd regarding the "non-availability of qualified United States flag capacity to meet national defense requirements." MarAd has assessed, based on the DOE recommendation, a "limited waiver of the Jones Act to facilitate movement of petroleum products via tank vessel from the Gulf Coast Petroleum Administration for Defense District (PADD 3) to the New England and Central Atlantic Petroleum Administration for Defense Districts (PADDs 1a and 1b, respectively). Use of non-coastwise qualified vessels would be required, and must load no later than November 13, 2012, offloading at their destinations no later than November 20, 2012. Except for the limited scope of the requested waiver, the coastwise laws of the United States otherwise will remain in full force and effect."

MarAd has advised that:

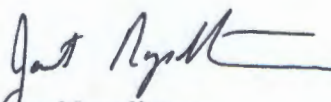
In order to assess the availability of coastwise qualified vessels to meet this requirement, the Maritime Administration ("MarAd") canvassed executives of the U.S. maritime industry electronically and via telephone to see if coastwise qualified vessels could be made available for this task. The result of this effort found that no U.S.-flag coastwise qualified tank vessels are open for booking at the necessary locations and within the required period for this carriage.

In accordance with established practice, the Department of Homeland Security has also consulted with the Department of Energy and the Department of Defense. The Department of Energy stated that "petroleum availability is crucial to economic security and the national defense," and that, as a result of the severe damage caused by Hurricane Sandy to the petroleum refining and distribution centers in the mid-Atlantic region, a Jones Act waiver is necessary in the interest of national defense. The Department of Defense concurs that waiver of the Jones Act is necessary in the interest of national defense in the instant circumstances.

The catastrophic destruction brought about by Sandy has impeded, and in some places in the affected region stopped altogether, production and transportation of oil and petroleum products. This lost production, refining and transportation capacity has resulted in the imminent unavailability of petroleum products, including gasoline, and threatens the Nation's economic and national security.

For the reasons stated above, and in light of the concurrence of the Department of Energy and Department of Defense and the non-availability determination by MarAd, I am exercising my discretion and authority to waive the Jones Act for the transportation of petroleum products from the Gulf of Mexico to the Northeast region of the United States. This waiver is in effect for petroleum products to be loaded on board non-coastwise-qualified vessels in Petroleum Administration for Defense District (PADD) 3 on or before November 13, 2012, or carried onboard non-coastwise-qualified vessels sailing from a point in the United States and diverted to another point in the United States, and discharged in PADDs 1A or 1B on or before November 20, 2012.

In order to ensure the objectives of this waiver are achieved, as a condition to this waiver, vessels operating pursuant to its authority shall report to MarAd, within 24 hours after loading or diversion, the name of each vessel so operated, its loading port, the amount carried, the date of loading or diversion, and the planned port of discharge. Within 72 hours after discharge of cargoes carried under this waiver, such vessels will report to MarAd the port, amount, and date of discharge.


Janet Napolitano
November 2, 2012