

Biden could waive Jones Act to curtail fuel shortage, White House says

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May 12, 2021

The Biden administration said it is prepared to waive a controversial shipping rule temporarily to ease a fuel crunch in parts of the East Coast and South, six days after a cyberattack shuttered a major petroleum pipeline.

The law, the 1920 Merchant Marine Act, or Jones Act, requires trade between U.S. ports to be carried on maritime vessels built, owned, and operated by U.S. citizens or permanent residents. It bars non-U.S. ships from carrying petroleum northward from Gulf ports to the Eastern Seaboard.

"We have gasoline," Energy Secretary Jennifer Granholm said during a briefing at the White House on Tuesday. "We just have to get it to the right places."

Six days into the outage, federal agencies had issued waivers on some environmental and labor rules to make it easier to transport and sell fuel but had not yet granted waivers to transport fuel on non-U.S. flagged ships.

The Department of Homeland Security said it "stands ready" to review requests for temporary exemptions from shippers who can show insufficient capacity on Jones Act-flagged tankers, the White House said on Wednesday.

In interviews, sources characterized the law as a political third-rail.

Reform of the rule frustrated officials in the Trump administration who found themselves at odds with lawmakers and other top White House advisers opposed to loosening restrictions. And while former President Donald Trump favored such an effort at one time, a five-year waiver plan was ultimately scrapped.

President Joe Biden's appetite to waive the rule, even under narrow circumstances, faces political considerations that weigh his use of political capital against the White House's perceived responsiveness to a potential public crisis.

Biden has endorsed the Jones Act repeatedly, on the campaign trail and in office. So, too, has Transportation Secretary Pete Buttigieg, who "strongly" affirmed his support for the law during his confirmation hearing before senators.

The pipeline's closure has spooked drivers. As of Tuesday evening, gas stations up and down the East Coast were running dry, including nearly 15% of stations in North Carolina, and roughly one in 10 in Georgia and Virginia, according to oil and gas analyst Patrick De Haan.

The crunch comes as Colonial Pipeline, one of the largest fuel suppliers in the country, carrying about 3 million barrels of fuel a day over more than 5,000 miles from Houston, Texas, to New York, shut down in the wake of a ransomware attack, causing prices in some places jumping by 10 cents or more a gallon.

By early Wednesday, North Carolina and three other states had declared a state of emergency as drivers sometimes waited hours to fill tanks, with prices in the region hitting \$3 per gallon for the first time since 2014. According to De Haan, 8% of gas stations in Washington, D.C., were out of gasoline, with Baltimore not far behind at 7%.

Colin Grabow, who heads the Cato Institute's Project on Jones Act Reform, said waivers could be issued by the executive branch if a reason was deemed in the interest of national defense.

The Obama administration did this in 2012 when Hurricane Sandy made landfall in New York, causing catastrophic damage to mid-Atlantic refineries. Trump did the same in 2017 after Hurricane Maria ripped through Puerto Rico.

“So there is definitely precedence for deeming fuel shortages as a threat to national security,” Grabow said. “In fact, if it's framed as part of a response to a foreign [cyber]attack on critical pipeline infrastructure, then it's not too difficult to imagine it happening.”

Still, Grabow added that he could think of no significant waivers in the last 30 years that did not involve hurricanes or wars, as occurred during conflicts in Libya and the Persian Gulf.

Not everyone views a waiver as necessary under the current circumstances.

Tom Kloza, global head of energy analysis at Oil Price Information Service, said he thought a Jones Act change wouldn't have much effect due to the transit time to move fuel from the Gulf Coast to areas scrambling for supply.

Friday is the highest demand day of the week, according to Kloza, suggesting a further crunch on the way, aggravated by a rush on the pumps by consumers.

“Ultimately, we are seeing the madness of crowds, and despite my best efforts, I have not been able to convince folks that if they are patient, the situation will resolve itself,” Kloza said. “This typically happens after hurricanes, and there is a manic element in the consumer response.”

Jones Act groups are already pushing back against a waiver.

“Our data indicates that there is significant vessel capacity available, and we have received no information to indicate that a Jones Act waiver is necessary to address a specific supply situation,” Jennifer Carpenter, the head of the American Waterways Operators, a trade group whose principal focus is defending Jones Act enforcement, told S&P Global. Her group is working with the administration and Congress on the availability survey.

“We, therefore, continue to oppose unwarranted Jones Act waivers,” she added.

In a statement, Mike Roberts of the American Maritime Partnership said Jones Act vessels could meet the demand.

“The American maritime industry has capacity available and the experience to transport refined products to help alleviate the distribution issues along the Colonial Pipeline, and is working with key energy stakeholders and policymakers to be part of the solution,” Roberts said.

The White House said shortages at the pump would be alleviated by supply coming back online amid efforts by Colonial and the federal government.

"It's not that we have a gasoline shortage. We have a supply crunch," Granholm said. Still, she continued, while Colonial had restored one line and expected to have resumed substantial operations by the end of the week, the days ahead "will be challenging."

Asked when a waiver might go into effect, Granholm pointed to Homeland Security Secretary Alejandro Mayorkas, then said, "This is the Jones Act guy."

The Homeland Security secretary, who would likely be the final signature on the decision, said his agency and the Transportation Department began working "immediately" to prepare for a possible Jones Act waiver request as news of the cyberattack became public.

"Of course, that need is not necessarily yet confirmed, but we wanted to be poised at the president's direction to be ready and to be able to act immediately," he said, noting that the administration would execute their review "in lightning speed."

The disclosure marked a shift from the White House's position on Monday.

Asked about the possibility of a waiver, press secretary Jen Psaki told the *Washington Examiner* that she did not want to get ahead of the interagency task force reviewing possible actions and that officials did not yet see a supply issue.

By Monday evening, some ground had shifted.

In a statement, Psaki said Biden officials were monitoring fuel supply shortages in the Southeastern United States and weighing every available action to mitigate the effects. Later that day, a statement by the Transportation Department announced the review. Shortly thereafter, the White House used its daily press briefing for the second day in a row to address the fallout from the incident.