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Sept. 11, 2017

Mr. Jeffrey G. Lantz
Director of Commercial Regulations and Standards
U.S. Coast Guard
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593

Re: Evaluation of Existing Coast Guard
Regulations, Guidance Documents,
Interpretative Documents, and
Collections of Information (Docket No.
USCG-2017-0480)

Introduction

The R Street Institute is a nonpartisan, free-market think tank. Headquartered in Washington, D.C., R Street seeks policy solutions that promote limited but effective government, taking a pragmatic approach to public policy.

On behalf of the R Street Institute, we submit these comments in response to the U.S. Coast Guard's request for comments on repealing, replacing or modifying Coast Guard regulations, guidance documents and interpretative documents in accordance with Executive Orders 13771, Reducing Regulation and Controlling Regulatory Costs; 13777, Enforcing the Regulatory Reform Agenda; and 13783, Promoting Energy Independence and Economic Growth. We appreciate the opportunity to voice our opinions and recommendations and applaud President Donald Trump's administration for initiating the effort to reduce and eliminate unnecessary and burdensome regulations.

Summary

In the 130 years since the U.S. Congress passed the Interstate Commerce Act, creating the first federal regulatory agency,¹ a proliferation of federal agencies have contributed to an explosion of regulations.

¹ The Interstate Commerce Commission was created in 1887 with the original purpose of regulating railroads.

With thousands of new regulations added each year, our federal system now contains more than 160,000 pages of regulatory codes.²

R Street believes that overregulation is a symptom of an overreaching and inefficient government system. Seeing that the Coast Guard relies on exceptional efficiency, cumbersome forms of outdated or unnecessary regulations only hinder the service's ability to perform in an optimal fashion.

Roughly the size of the New York City police force, the Coast Guard functions daily abiding by its motto of *Semper Paratus*, "always ready." In order to continue its mission in the most efficient manner, the Coast Guard would greatly benefit from removing or updating regulations that may not only impose unnecessary costs, but also compromise safety.

As the nation's foremost life-saving service, the Coast Guard is devoted to its people and its mission. R Street offers the following recommendations as part of the Coast Guard's effort to identify regulations and guidance documents in need of repeal, replacement or modification.

Comments

1) 46 CFR § 67.97: United States Built

To be considered built in the United States a vessel must meet both of the following criteria:

- (a) All major components of its hull and superstructure are fabricated in the United States; and*
- (b) The vessel is assembled entirely in the United States.*

Regulations created to enforce the *Merchant Marine Act of 1920*, otherwise known as the Jones Act, are not only burdensome, but costly to the American consumer. A lack of competitive options makes domestic shipping in the United States more expensive.

The Jones Act was created to secure a robust national defense and to put national interests forward by prioritizing the American maritime industry. Despite these well-meaning intentions, the law has since resulted in a form of protectionism and what the World Economic Forum considers to be the world's "most restrictive" coastwise trade laws.³ Ultimately, U.S. shipyards and the U.S. merchant fleet have been on a steady decline. As of 2011, of the 171 ocean-going, privately owned U.S. flagged ships, only 93 were Jones Act-eligible, and 73 were categorized as militarily useful.⁴

² Susan E. Dudley, *Reforming Regulation*, Cato Online Forum (Nov. 25, 2014), <https://www.cato.org/publications/cato-online-forum/reforming-regulation>.

³ John Moavenzadeh, et al., *Enabling Trade Valuing Growth Opportunities*, World Economic Forum (2013), http://www3.weforum.org/docs/WEF_SCT_EnablingTrade_Report_2013.pdf.

⁴ Russ Kashian, et al., *The Jones Act in Perspective: A Survey of Costs and Effects of the 1920 Merchant Marine Act* (2017), <http://assets.grassrootinstitute.org/wp-content/uploads/2017/04/Jones-Act-Final-4-8-17.pdf>.

Moreover, 46 CFR § 67.97, alongside a recently released Coast Guard determination,⁵ provides unclear direction and a set of convoluted exceptions individually determined by the Coast Guard's Naval Architecture Division ("NAD"). While further guidance on the statute is helpful and, at many times, necessary, it appears some of these additional rules are arbitrarily created in order to circumvent demanding requirements found in 46 CFR § 67.97 and the Jones Act, in general. These circumventions demonstrate acknowledgement of an unnecessary burden on the system, the Coast Guard and ship owners who face financial disaster if they fail to meet these onerous standards.

An example of these more confusing, supplementary determinations involves shipbuilding angles. According to a Coast Guard determination memo,⁶ it was clarified that shipbuilding angles purchased from foreign steel manufacturers in standard lengths and not customized for use in American vessels are acceptable under 46 CFR § 67.97, as opposed to those worked in any way (i.e. cutting, beveling, drilling, etc.) outside of the United States.

2) 46 CFR § 67.177: Application for Foreign Rebuilding Determination

The "rebuilt" statute sets guidelines for what constitutes the rebuilding of a ship under Jones Act standards. The statute itself is long and overly complicated, requiring submission of a report detailing all work done outside the United States. Like 46 CFR § 67.97, these detailed requirements are a burden to ship owners who depend on a positive Jones Act eligibility standing.

Furthermore, varying definitions of what constitutes a "major component" adds to the confusion. Referring to the "major component" issue, two court cases confirmed the Coast Guard's view that the addition of components, piece-by-piece, did not amount to an addition of a "major component."⁷ These cases included the addition of a deck, piece-by-piece, and an inner hull, piece-by-piece. Again, there appears to be a concentrated attempt to circumvent unnecessary requirements by making unique exceptions to the rules, thus indicating a need for repeal or substantial reform to loosen the tight restrictions and lack of clarity that current standards impose.

Conclusion

Economic burdens brought about by the Jones Act and supporting regulations should be eliminated or considerably reformed. According to the U.S. International Trade Commission, reform or repeal of the Jones Act would yield an economic benefit of about \$5 billion to \$15 billion.

We again appreciate the opportunity to provide our comments and are encouraged by the Coast Guard's efforts to reduce or remove regulatory burdens. The Coast Guard's dedication to its people and the public is exemplary, and we hope to assist its efforts to serve our nation by engaging in further conversation where we can contribute constructive policy recommendations and support.

⁵ Christina G. Washburn, *Coast Guard Memorandum* (July 25, 2017), <http://cdn2.winston.com/images/content/1/2/v2/126900/Philly-ShipyardAloha.pdf>.

⁶ *Id.*

⁷ H. Allen Black, et. al., *U.S. District Court Upholds Coast Guard's Matson Foreign Rebuild Determinations*, Lexology (Dec. 9, 2009), <https://www.lexology.com/library/detail.aspx?g=59ccb696-b740-436c-9f14-afd0e4e9e31e>.

Respectfully Submitted,

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