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# The Canadian Merchant Service Guild

A NATIONAL ASSOCIATION OF MASTERS - MATES - PILOTS - ENGINEERS AND OTHER MARINE OFFICERS

## La Guilde de la Marine Marchande du Canada

ASSOCIATION NATIONALE DES CAPITAINES - OFFICIERS DE PONT - PILOTES - MÉCANICIENS ET AUTRES OFFICIERS MARINS

AFFILIATED WITH / AFFILIÉE À

INTERNATIONAL MARITIME PILOTS' ASSOCIATION - INTERNATIONAL TRANSPORT WORKERS' FEDERATION - NATIONAL JOINT COUNCIL OF CANADA  
ASSOCIATION INTERNATIONALE DES PILOTES MARITIMES - FÉDÉRATION INTERNATIONALE DES OUVRIERS DU TRANSPORT - CONSEIL NATIONAL MIXTE DU CANADA

**OTTAWA - VANCOUVER - THOROLD - QUÉBEC - DARTMOUTH - ST. JOHN'S**

February 18, 2019

Elisabeth Bertrand  
Director of Personnel Certification and Standards  
Marine Safety and Security, Transport Canada

elisabeth.bertrand@tc.gc.ca

Dear Ms. Bertrand,

### Re: Transport Canada's Document Concerning Draft Amendments to the Marine Personnel Regulations

The Canadian Merchant Service Guild ("the Guild") is the labour and safety representative for most of the officers employed on ships and tugs across the country. Our 4,000 members include Masters, Mates, Pilots, Engineers and other marine officers engaged in every segment of shipping from offshore supply vessels to tankers, freighters, towboats, lakers, deep sea vessels, passenger ferries and pilotage operations in every part of Canada. The Guild is committed to ensuring the safety of life at sea and the well-being of seafarers and we participate on all committees involved in the development of marine regulations and matters affecting seafarers.

The Marine Personnel Regulations (MPRs), issued under the authority of the *Canada Shipping Act (2001)*, are of vital importance to Guild members, in that they set out the requirements for the qualifications, training and certification of crew members. In addition to promoting a safe and efficient marine transport system, and ensuring Canada meets its international obligations, and protecting the environment, the MPRs also set out conditions which affect the health and well-being of individual crewmembers.

The Guild is focussed on those proposed MPR amendments in Transport Canada's recent draft document that could affect safe operations, or impact positions that Canadian officers could hold, or conditions pertaining to their employment. As such, the attached submission primarily addresses issues related to safe manning and certificates of competency. Some sections of the proposed amendments have also been identified in our submission as requiring clarification.

A general concern, reflected in our submission but deserving emphasis, is the need for robust and objective “minimum safe manning” standards by competent Canadian personnel. More specifically, any changes that may be championed by some stakeholders, for the purpose of addressing personnel shortages, are in our view especially wrong-headed. Our submission emphasizes the importance of alternative strategies to address recruitment of Canadians and career development issues which need to be exhaustively pursued. This would result in safer operations, and a healthier, more competitive industry.

Given the importance of the MPRs and the Guild’s role as the representative of many marine officers, we appreciate the opportunity to provide input to the revision of the MPRs currently being undertaken by Transport Canada. We recognize that the revision of the Regulations is a work in progress, and we look forward to further discussions.

Yours truly,

A handwritten signature in blue ink that reads "Mark Boucher". The signature is fluid and cursive, with the first name "Mark" being more prominent than the last name "Boucher".

Mark Boucher  
National President

cc: International Transport Workers’ Federation (ITF)

**Submission by the Canadian Merchant Service Guild**

**re: Transport Canada's Draft Document  
Concerning Amendments to the  
Marine Personnel Regulations**

**February 2019**

## **Section 124 - Small Vessel Operator**

Serious safety concerns have been raised during consultations with stakeholders regarding the very minimal level of training and sea-time experience requirement of the proposed new Small Vessel Operator (SVO) Certificate, particularly with regard to the risks involved with the operation of tugs.

Other Canadian Officers and Pilots operating much larger vessels, often with restricted maneuverability, in tight quarters such as the Fraser River and other challenging and congested waterways, need to rely on the Regulator to ensure that as much as possible, the commercial craft that they encounter are operated by individuals who are competent and experienced.

With these concerns in mind, clearly **the extremely narrow validity of the proposed new SVO certificate that was rolled out in previous consultation sessions (tugs or workboats limited to a maximum length of 12 metres and under 350 kilowatts propulsive power, operating within a very narrowly-defined construction zone) needs to be added to Section 124 of the new MPRs.**

## **Sections 137 to 143 - Engineering Certificates of Competency**

### **Third Class and Fourth Class Engineers**

In aligning the Engineering Certificates of Competency with the international standards of the STCW Convention 2010, the proposed amendments to the MPRs eliminate certain Engineering Certificates. The Guild's position is that this change should not result in current holders of Third Class and Fourth Class Certificates being unable to continue to serve in positions they now occupy. Nor should it require them to be classified at a lower pay grade.

**Accordingly, the proposed certificate exchange program, as set out in Transport Canada's exchange table, should reflect the principle that engineers are deemed qualified to continue to serve in positions they have occupied, and for which they have satisfactorily carried out the duties, in most cases for many years.** This approach is consistent with Canada's past practice of granting grandfather status to individuals who have already safely proven their competence prior to the introduction of changes in regulations that can impact their certification or livelihood. It also reflects international practice, where transitional arrangements to protect current certificate holders are the norm.

In Resolutions from the STCW 2010 Manila Amendments, recognition is given to the *"need for all ships to be manned and operated by properly trained and certified seafarers"*. Even though some of the more mature holders of Canadian Third Class and Fourth Class Engineering Certificates may not have completed all of the new courses that would be required under the amended MPRs, they do have Certificates that are valid under the current MPRs, as well as, decades of experience which meets the intent of having properly trained and certified seafarers manning vessels.

The STCW Code lists the minimum knowledge, understanding and proficiency required for certification including the methods for demonstrating competence in the following table:

*Examination and assessment of evidence obtained from one or more of the following:*

- 1 *approved in-service experience*
- 2 *approved training ship experience*
- 3 *approved simulator training, where appropriate*
- 4 *approved laboratory equipment training*

The STCW Code allows for approved in-service experience, which clearly these officers have obtained during their tenure in their current positions.

Resolution 12 further addresses the importance of retaining seafarers in the maritime profession by providing an adequate exchange of certificates to allow them to continue sailing in their present positions.

In practical terms, this would mean **those engineering officers currently holding Third Class or Fourth Class Certificates and working as Second Engineers and Third Engineers on Canadian-flag vessels, would be permitted to continue to maintain these positions while sailing in Canadian waters.**

### **Section 144 - Small Vessel Machinery Operator (SVMO)**

The “Note to Reader” regarding Section 144 states that the Small Vessel Machinery Operator Certificate of Competency is *“being re-designed to reflect realities on vessels greater than 750 kW. A Small Vessel Machinery Operator Certificate of Competency restricted will be introduced.”* It is not at all clear what those “realities” are. The amended MPRs do not state the intended use of the SVMO restricted certificate. Because of this, it is not possible to assess the value or efficacy of the re-design, or whether there is even a need to introduce a restricted certificate.

If the introduction of a restricted certificate is intended to address a real or perceived personnel shortage, it should be so stated, and the extent and nature of the shortage be examined. Otherwise, the effectiveness of the proposed changes cannot be assessed. In any event, it is arguable that changing personnel requirements and qualifications that can have an important impact on the safe operation of vessels is not the right way to address such shortages. Instead, examining recruitment practices, career advancement, compensation, training, and other conditions of employment should be pursued.

An example of how the introduction of a re-designed certificate could impact safety is illustrated by the fact that in the proposed draft new MPRs, the **1 month** of sea service required to obtain the SVMO certificate no longer stipulates that any of that sea service include engine room duties, and yet the SVMO Certificate of Competency is an engine room certificate.

Any systematic reduction of certificate requirements or reduction of positions on vessels may provide short term relief, however, this is not sustainable and is a disservice to the marine industry in the long run by leading to a shortage of qualified personnel. Vessels are becoming more complex every year, thus requiring more knowledge and a higher skill set rather than minimal qualifications.

Taken as a whole, reducing certificate requirements and the number of positions on vessels are clear threats to safety, and should only be considered if a compelling case has been made for them, and only if other remedies are not effective. **Absent a justification for the introduction of a new certificate (Small Vessel Machinery Operator Certificate – Restricted), the proposed MPRs should provide only for a certificate of competency for the Small Vessel Machinery Operator category. The Guild is not in favour of expanding the “validity” or “area of operation” of the SVMO certificate beyond that already specified in the current MPRs.**

## **Sections 201 to 205 - Minimum Safe Manning**

### **Vessels That Will Require a Minimum Safe Manning Document**

In earlier stakeholder consultations, the necessity was understood for all tugs engaged in commercial activities to be included in the requirement for a “minimum safe manning document”, as set out in Section 202 (1). Consistent with this intention, such vessels should **not** be identified for exception under 202 (1) (b) regardless of tonnage or length; especially given cases of inconsistent or manipulative construction alterations / measurements of gross tonnage that sometimes exist to avoid certain regulatory requirements.

While we recognize that the proposed amendments to the new regulations have been rolled out as a draft document, it appears that an exemption may have been included under 202 (1) (b) for commercial vessels under 15 tons, which is already an area of numerous very serious safety concerns in the marine industry.

For greater clarity, all tugs should be specifically identified in Section 202 (1) as requiring a minimum safe manning document. Accordingly, a new subsection should be added to read as follows: **201 (1)(e) “any tug engaged in commercial activities.”**

### **Sufficient Personnel on Board to Prevent Fatigue and to Recover a Person Falling Overboard**

The ability to recover a person falling overboard is a crucial consideration when determining an appropriate manning level. Therefore, the explanation of how the proposed manning level is sufficient to deal with emergency situations should explicitly include the recovery of a person falling overboard from the vessel, under normal operating conditions of wind and tide and ice and current.

At meetings of the Canadian Marine Advisory Council, since 2010, labour representatives affiliated with the ITF, including the Guild, have raised our serious concerns, in this era of reduced crew sizes, of the vital importance of commercial vessels being crewed by a sufficient number of persons to be able to respond to emergencies on board, to prevent accidents due to fatigue, and to be able to recover a person falling overboard. These requirements need to be stipulated in the new MPRs by requiring that high-horsepower, multi-deck ship berthing tugs should have a sufficient minimum safe manning level of at least 3 seafarers on board, even in sheltered waters, in order to be able to prove the capability to respond to all emergencies on their vessel.

The recovery of a person falling overboard should be added as an explicit example of an emergency situation for which there must be sufficient manning at all times when the vessel is underway. The section in question would then read as follows: Section 203 (2)(b) “an explanation of how the minimum safe manning level proposed in the application is sufficient to deal with emergency situations, including the evacuation of passengers **and the recovery of a person falling overboard from the vessel.**”

### **Criteria for the Issuance of a Minimum Safe Manning Document - the need to specifically emphasize fatigue, emergencies, and watchkeeping**

To the greatest extent possible, the issuance of the minimum safe manning document should be based on meeting criteria that are specific, objective, and commonly understood. For this to be the case, the requirements should be clearly stated in the relevant section of the regulations.

To be more explicit, the section in question would then read as follows: Section 203 (4)(c) “the proposal satisfies the requirements for the vessel’s minimum safe manning level specified **in Section 319 respecting hours of rest to prevent accidents due to fatigue; Section 236 requiring two-person watchkeeping in those situations as identified in Ship Safety Bulletin No. 7, 2017; and, Section 203 (2)(b) related to minimum complement to deal with emergency situations.**”

### **Sections 211 and 212 - Foreign Certificates of Competency**

An ongoing matter of special interest for all Canadian maritime organizations is the availability of qualified and well-trained marine personnel, not only to staff Canadian vessels, but also to create a pool of candidates for a variety of essential, senior positions in both the public and private sectors needed to maintain safe, efficient maritime operations.

The need for competent and qualified seafarers is self-evident, insofar as Canada’s domestic fleet cannot operate without such individuals. What is not always as obvious is the fact that these mariners are a crucial source for succession to key positions in the broader maritime sector.

Any initiative that opens the door to a decrease in the number of jobs for Canadian seafarers would also have significant impacts on income tax revenue, spinoff losses from spending effects in the Canadian economy, and detrimental impacts on marine training institutes.

In our view, there is a serious risk that the new Section 211 of the draft MPR document as proposed would introduce an unacceptable "permanent foreign worker program" with no restrictions around the use of foreign certificates on board Canadian-flag vessels. "Temporary foreign worker" programs in other sectors of Canada have been problematic enough, let alone a permanent one. In the Guild’s view, a temporary foreign worker program on Canadian-flag vessels would introduce the following risks that would not be in the National Interest:

- the risk of decreasing the commitment by some Canadian employers to training and recruitment and certificate upgrading of Canadian candidates for seafaring positions; i.e. less incentive for Canadian companies to continue to allocate profits to significantly contribute to marine training and upgrading (and thus the continued employment of Canadians)

- risks to the eight Canadian marine training institutes, certified by Transport Canada, which rely on demand from qualified Canadian candidates to generate student enrollment. The gradual introduction of foreign seafarers on Canadian-flag vessels will reduce the need for these training centres which currently provide more than 240 full-time equivalent jobs in teaching, administration and management and over \$18 million in annual wages.

One of the generally-accepted principles governing the current MPRs is that Canadian-flag vessels be manned by Canadians holding the appropriate certificates. In circumstances when a certificate holder is not available, a provision exists in the current MPRs for the Minister to issue a dispensation to authorize an individual who does not hold the required certificate of competency to temporarily perform the duties in question until a properly qualified Canadian becomes available. We are not aware of abuses of the current dispensation system and Transport Canada has proposed to include the existing dispensation system in the new MPRs.

Whenever possible, dispensations should only be issued to Canadian seafarers, however, the Guild recognizes that there may be instances in the future when such a person is not immediately available. In those cases, an individual holding a foreign certificate of competency could be granted a dispensation.

However, prior to introducing any dispensation for temporary foreign workers on board Canadian-flag vessels, alternative initiatives to address personnel shortages need to be exhausted and the following prerequisites need to be fully explored to ensure priority is given to Canadian seafarers:

- convincing proof of extensive advertising of marine job vacancies across Canada using both internet-based and traditional platforms, to provide awareness of opportunities to unemployed or under-employed Canadians
- possible apprentice opportunities for Canadians to gain experience on board Canadian vessels or undertake training to eventually become qualified for future similar opportunities
- expand the possibilities for employment aboard ships having vacant berths for seafarers serving as apprentices / supernumeraries / cadets in order to obtain experience and sea-time toward specialized qualifications such as oil tanker endorsements
- fast-tracking foreign nationals to become Canadians and obtain Canadian marine qualifications
- introduce a transparent system similar to the Canada Transportation Agency's application procedure which is used to request a temporary Coasting Trade License (for a foreign ship on Canadian voyages when a Canadian-flag vessel is not available) - similarly, any request for a "dispensation" to employ a foreign national on a Canadian-flag vessel would be required to be distributed in advance by e-mail to a wide cross-section of interested parties and stakeholders in the Canadian marine industry
- create a publicly accessible internet database of applications (and approvals) for foreign nationals on Canadian-flag vessels (not containing personal information identifying individuals) to be maintained in chronological order with advance notice, of a specified number of business days, for new applications that are "pending approval" should there be no qualified Canadians available



It is the strongly-held position of the Guild that it is in the National Interest to continue to employ Canadians in safety-sensitive marine positions to ensure a strong stake in protecting the environment and a vested interest in being familiar with local conditions and complying with Canadian regulations and legislation. Accordingly, the Guild is **not** in favour of introducing temporary foreign workers on Canadian-flag vessels until all other alternatives have been thoroughly pursued and exhausted.

To better reflect this approach, it is recommended that the new **Section 211 of the proposed draft MPRs be deleted, and that instead, the following be added to Section 212**, which would then read as follows:

212 (1) “In circumstances of exceptional necessity, the authorized representative of a vessel may make a written request to the Minister for a grant of a dispensation authorizing a person to occupy a position on board the vessel without holding a Canadian Maritime Document that a person in that position is required to hold under these Regulations.”

212 (2) “The Minister may, if the circumstances justify it, grant a dispensation in accordance with Article VIII of the STCW Convention, authorizing a person to perform the duties of a position on board a vessel without holding the required Canadian maritime document. **In circumstances where a Canadian cannot be identified to perform the duties of the position in question, the Minister may direct, under subsection 89 (1) of the *Canada Shipping Act*, that a person holding a certificate of competency issued by the government of a foreign state be granted a dispensation. Such a dispensation would only be granted to an individual holding a valid work permit issued by the Minister of Refugees, Immigration and Citizenship authorizing the person to work in Canada. The Master of a vessel must ensure that the foreign certificate of competency is accompanied by an endorsement of recognition issued by the Minister of Transport in respect of that certificate when the holder presents the certificate to the Master.**”

212 (3) “A dispensation granted by the Minister is valid until the earlier of:

- (a) The day on which a holder of the required Canadian Maritime Document is available **or, in the case of a foreign certificate holder, when a Canadian with a dispensation granted by the Minister becomes available; or,**
- (b) 6 months after the date on which the dispensation is granted.”

### **Section 218 - Engineer Certificates Table – Vessels Other Than Fishing Vessels**

In the table included in Section 218 (1), it is unclear what constitutes the category “Domestic Voyage” (Column A), in that “Near Coastal 2” voyages (Column A) are also domestic voyages.