



Stakeholder Comment Form regarding the draft Marine Personnel Regulations, 2023 Public Consultation Document

* Please provide your input on one issue per Stakeholder Comment Form. If required, you can submit multiple forms (for different issues/comments).

First name Mark	Last name Boucher
Business telephone	Business e-mail cmsg@ottawa-email.com

Please indicate your most appropriate affiliation:

- Seafarer
 Seafarer welfare organization
 Authorized representative
 Labour organization
 Other: Canadian Merchant Service Guild

Please indicate which Part of the draft Regulations your comment is about:

- Part 0: Interpretation/Definitions
 Part 1: Certification
 Part 2: Marine Medical Certificates
 Part 3: Crewing, Training and Watchkeeping Requirements
 Part 4: Maritime Labour Standards
 TP 2293: Qualifications for the Certification of Seafarers

Please indicate the section number within the Part, if applicable: 1025(2) Problems with SVO Cert. being valid for Tugs

Comment(s)

We propose that the draft wording of 1025 (2) be amended to indicate that ...
a holder of a Small Vessel Operator certificate of competency, may only be issued ...

(b) a tug endorsement, if the holder:

(i) has successfully completed the "tug module" of the small vessel operator course and possesses the appropriate qualifications applicable in Table 1026 (1) for a "Master Limited for a Vessel of Less than 18 Metres in Length" and ...
(no change proposed to remainder of b)

CMSG Rationale:

The Guild has already proposed to make the tug module mandatory in the Table of Qualifications in 1026 (1) so there would be no need to specify it here. However, the other requirements listed in 1026(1) are also relevant and important and should be added to Section 2(b).

Example: The qualifications of a Master Limited under 18 Metres (formerly a Master Limited under 60 tons) will qualify a seafarer to be Master of a tug of 13 metres provided the tug is named on the certificate of competency and the vessel is limited to the geographical area and time of year specified on the certificate of competency.

Under the draft MPR, an applicant for the new proposed Small Vessel Operator tug endorsement could end up certified to operate any tug of up to 12 metres (the tug is not named on the certificate of competency) at any time of the year (the period of validity is not listed on the certificate of competency) of unlimited horsepower, towing any size barge or vessel (no limit on the tug power or the size of the tow has been specified, or whether the tow can include hazardous cargoes or petroleum products) on a Near Coastal Voyage Class 2 up to 25 miles from shore - yes, validity on such a voyage could end up being specified as within the limits of this certificate of competency under 3030(1) sections 4(c) and(d).

Meanwhile, on such voyages up to 25 miles from shore, the master of the 13 meter vessel (formely a "60-ton ticket" or Master under 60 tons) would be required to hold the qualifications of "Chartwork and Pilotage Level 1" and "Navigation Safety Level 1" and "General Ship Knowledge" and will still be limited to the specified time of year and the particular vessel named on the Certificate of Competency.

For the operation of tugs, the master of the 12 meter vessel should be required to possess the same qualifications applicable to the master of the 13 meter vessel operating in the same area. If not, then the validity for the new SVO certificate for masters of vessels 12 meters or less should not be applicable to tugs. In the interest of the safety of the personnel working aboard tugs and the safety of the other vessels that will be encountered by this tug and its tow, the qualifications of the master of this vessel should not be reduced below the level they are now.

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Please indicate the section number within the Part, if applicable: 1100 Exchange of Engineering Certificates

Comment(s)

1100 Exchange - former engineering certificates or former engineering endorsements

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 that we require that 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.

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Please indicate the section number within the Part, if applicable: 2017 (2) No Deadline for decision by TC on Medicals

Comment(s)

Section 2012 (3) section (c) requires that if a marine medical EXAMINER issues an interim medical certificate they must within 30 days send a copy to the Minister with other documentation included.

Section 2014 (2) requires that if a marine medical EXAMINER determines that a person is unfit for sea service they must within 5 days send a copy to the Minister with other documentation included.

Section 2015 (1) requires that a SEAFARER must within 30 days following the date of the letter referred to in subsection 2012 or 2014 send a notice of contestation to the Minister.

Only "after" the Minister makes a decision regarding the contestation, can the seafarer apply for a review or appeal under sections 2021 and 2022 because it is the decision of the Minister that is being appealed.

There are deadlines in all of the other steps in this very important process, with the one EXCEPTION that the requirement for any deadline for the Minister to make a decision in Section 2017 (2) has been OMITTED.

Without a decision from the Minister at that step, the process could become stalled indefinitely and the seafarer cannot request an appeal or review. Any unreasonable delays can cause financial hardship for a seafarer unable to continue working without a valid medical clearance and without recourse to appeal this situation.

We propose that the draft wording of 2017 (2) be amended to read:

(2) Following the Minister's examination under subsection (1) WITHIN 30 DAYS FOLLOWING THE DATE REFERRED TO IN SUBSECTION 2015 (1), the MINISTER MUST make one of the following decisions:

(a) ... no changes proposed to remainder of wording

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Please indicate the section number within the Part, if applicable: 3002 - Tug Tonnage Loophole needs to be corrected in MPR

Comment(s)

Part 3 - Crewing, Training and Watchkeeping Requirements

Application:

3002 (c) indicates that this Division would not apply to uninspected vessels.

We propose that the draft regs be amended to indicate that this Division does not apply to uninspected vessels "OTHER THAN TUGS"

CMSG Rationale:

Uninspected Vessels refers to vessels under 15 gross registered tons. In many cases, tugs under 15 gross tons perform the same work as tugs over 15 gross tons. By proposing to have Division 1 not apply to these tugs, the draft proposes to exempt tugs under 15 gross registered tons from the Minimum Safe Manning regulations.

In order to comply with watchkeeping requirements and to prevent fatigue and to be able to cope with emergencies, all vessels need to be operated with a safe level of manning, particularly tugs, which are known for small crew sizes and sometimes risky assignments. To ensure a level-playing-field across the tug industry, the minimum level of safe manning should be approved and enforced by the regulator (Transport Canada).

In this country, there is a well-known problem with tonnage measurements of tugs and this has not been addressed. The matter was identified once again following the 2017 accident with the 9.81 Gross Ton tug "Ocean Monarch" (see Transportation Safety Board - Investigation Report # M17P0244) The report states that following the accident, the TSB obtained a sampling of tonnage measurement data for tugs measuring 12 to 15 m long and registered as not more than 15 GT currently operating in BC. Using this data, the TSB conducted an analysis of 51 tugs' depth dimensions to determine whether they were realistic, given each tug's overall registered GT. The TSB assessed that 17 tugs did not have accurately registered GT measurements because of unrealistic depth dimensions. At the time of the occurrence, the Ocean Monarch's GT was estimated as 63.6 not 9.81 tons as registered with TC.

This report also contains a reminder that in the Spring of 2017, TC inspected 30 tugs of not more than 15 GT and 30 tugs of greater than 15 GT. Based on an analysis of results from the campaign, TC concluded that tugs of not more than 15 GT had significantly more instances of regulatory non-compliance than tugs of greater than 15 GT.

The TSB report also contains a reminder that prior to any of this, the Guild and other stakeholders had brought the tonnage measurement issue to the attention of TC: "In 1991, owners of tugs with accurately registered GT measurements, the Canadian Merchant Service Guild, and some employees on tugs with inaccurately registered GT measurements brought this issue to the attention of TC. ... To understand the magnitude of the issue, TC conducted a survey and identified at least 25 tugs registered as of less than 15 GT that were suspected to be of greater than 15 GT. After deliberations with industry, TC grandfathered these tugs. The Ocean Monarch was constructed around the time this decision came into force. Although TC did not grandfather the Ocean Monarch, following a dispute between TC and the owner, TC did allow the tug to be listed with a GT of 9.81, even though its actual GT was calculated as 31.18

The Guild recognizes that we are proposing an administrative burden on Transport Canada by advocating that, for important safety reasons, all tugs, no matter what their gross tonnage supposedly is, should be required to comply with the Minimum Safe Manning requirements of the Marine Personnel Regulations. However, an increased administrative burden is legitimately justified because it has been recognized that tugs of under 15 GT have more instances of regulatory non-compliance than tugs of over 15 GT; tugs of under 15 GT often perform the same work as tugs of over 15 GT; there is a well-known and long-standing problem with the measurement of the gross tonnage of tugs in Canada; and most-importantly, establishing and enforcing proper levels of safe manning is but one minimum contributing factor to improving safety on all tugs.

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Please indicate the section number within the Part, if applicable: 3004 - 3006 Safety of Human Crew MUST be Added

Comment(s)

Part 3 - Division 1 - Minimum Safe Manning

Sections 3004 to 3006 of the Draft MPR require that the minimum crew complement of the vessel must be sufficient to be able to ensure:

- the security of the vessel (this is mentioned 3 times)
- the protection of the marine environment (this is mentioned 3 times)
- the evacuation of passengers on board (this is mentioned 3 times)
- carrying out a fire patrol, and other important considerations are also identified

We submit that having a sufficient complement on board a vessel to ensure the "SAFETY OF THE CREW" is clearly missing, and needs to be added in the 3 places where ensuring the "vessel security" and "protecting the marine environment" have already been identified.

We further propose that having a sufficient complement on board a vessel to "RECOVER A PERSON FALLING OVERBOARD" needs to be added immediately following each of the 3 instances where the evacuation of passengers has already been identified.

The Guild has made a number of previous submissions regarding the importance of Transport Canada implementing a requirement to have a sufficient number of persons on board vessels in order to be able to recover a person falling overboard, particularly with regard to multi-deck, high-horsepower ship-berthing tugs. This factor needs to be specifically added to the determination of the safe manning level of a vessel. It is as important as having a minimum complement sufficient to evacuate passengers and to respond to other emergencies and in our view it is MORE important than some of the other factors that have been specifically identified in Section 3004 through 3006.

We propose that the Draft MPR be amended to read as follows:

3004 (1) The authorized representative of the vessel must submit an application for a minimum safe manning document to the Minister using the form provided by the Minister. The application must contain the following:

- (a) a proposal by the authorized representative for the minimum complement of the vessel, determined
 - (i) by meeting the requirements of these Regulations regarding the positions that must be occupied on board vessels,
 - (ii) by following the guidelines set out in accordance with Annex 1 and Annex 2 of IMO Resolution A.1047(27), and
 - (iii) by specifying a sufficient number of people to allow the simultaneous execution of the emergency duties set out in section 3005 without affecting the personnel needed to maintain the complement for the deck, navigational, radio and engineering watches; and
- (b) an explanation of how the proposed minimum safe manning complement in the application is sufficient to deal with emergency situations, including the evacuation of persons on board the vessel and the recovery of a person falling overboard.

Assessment

- (2) The authorized representative makes the following assessments and submits them to the Minister:
- (a) the assessment of the tasks, duties and responsibilities that the vessel's complement must undertake to ensure the vessel's safe operation, its security, the safety of the crew, the protection of the marine environment, and for dealing with emergency situations; and
 - (b) the assessment of the positions that must be occupied on board the vessel and their number to ensure the vessel's safe operation, its security, the safety of the crew, the protection of the marine environment, and for dealing with emergency situations, including the evacuation of passengers and the recovery of a person falling overboard.

Emergency duties

3005 The Minister must specify the number of persons that the Minister considers necessary on board a vessel or a category of vessel to perform each of the emergency duties listed below in a safe manner without compromising the personnel assigned to the navigational watch, the engineering watch and the radio watch:

- (a) preparing, launching and taking charge of survival crafts and evacuation systems;
- (b) firefighting and carrying out a fire patrol;
- (c) carrying out an evacuation and recovering a person falling overboard;
- (d) directing and controlling the passengers during and after an evacuation; and
- (e) providing first aid and medical care on board.

Evaluation of the application

3006 (1) The Minister evaluates the authorized representative's proposed minimum complement to ensure that it

- (a) meets the requirements of these Regulations regarding the positions that must be occupied on board vessels;
- (b) contains the number of persons having received the training to fulfil the tasks, duties and responsibilities required for the safe operation of the vessel, for its security, for the safety of the crew, for the protection of the marine environment and for dealing with emergency situations; and
- (c) is sufficient to meet the requirements concerning the hours of work and hours of rest established in Part 4 of these Regulations for the master and every crew member.

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Please indicate the section number within the Part, if applicable: 3043 Upgrade qualifications for SVMO future candidates

Comment(s)

3043 (2) and (4)

Engineers are an important and integral part of the crew of any vessel. The positions of Chief Engineer Officer, Second Engineer Officer or Officer in Charge of an Engineering Watch can all be replaced on a tug with propulsive power of at least 750 kW but less than 2 000 kW with a SVMO certificate on a NC2 voyage. The area in which this SVMO certificate can be used is expanding and the availability of assistance or a nearby port of refuge is no longer a requirement on a NC2 voyage when the engineering officer is being replaced with a SVMO certificate holder. There are clearly very significant additional responsibilities and liabilities that come from holding and utilizing an SVMO Certificate of Competency, and serving as the engineer on board these vessels as well as being required to perform the very comprehensive range of duties described in 3043(4). The qualifications required to obtain an SVMO Certificate need to be expanded to include additional training and experience to address the important duties and responsibilities of this position.

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