



FEDERAL MARITIME COMMISSION

[Docket No. 20-10; Petition No. P1-20]

Investigation into Conditions Created by Canadian Ballast Water Regulations in the U.S./Canada Great Lakes Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of investigation and request for comments.

SUMMARY: The Federal Maritime Commission has initiated an investigation into the allegations made in a petition filed by the Lake Carriers' Association that conditions created by the Government of Canada are unfavorable to shipping in the United States/Canada trade.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by Docket No. 20-10, by the following method:

- *Email:* secretary@fmc.gov. For comments, include in the subject line: "Docket No. 20-10, Comments on Conditions Created by Canadian Ballast Water Regulations in the U.S./Canada Great Lakes Trade." Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

Docket: For access to the docket to read background documents or public comments received, go to the Commission's Electronic Reading Room at:
www2.fmc.gov/readingroom/proceeding/20-10/.

Unless otherwise directed by the commenter, all comments will be treated as confidential under 46 U.S.C. 42105 and 46 CFR 550.104.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting comments or the treatment of confidential information, contact Rachel E. Dickon, Secretary; Phone: (202) 523-5725; Email: secretary@fmc.gov. For technical questions, contact: Peter J. King, Deputy Managing Director; Phone (202) 523-5800; Email: OMD@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

On March 6, 2020, the Lake Carriers' Association (Petitioner), a trade association made up of U.S. owners and operators of vessels serving the Great Lakes (Lakers), filed a petition alleging that conditions created by Transport Canada, an agency of the Government of Canada, are unfavorable to shipping in the United States/Canada trade, pursuant to Section 19(1)(b) of the Merchant Marine Act, 1920 (Section 19) codified in 46 U.S.C. 42101. Section 19 authorizes the Federal Maritime Commission (Commission) to investigate these conditions and to adopt regulations to adjust or meet such conditions. In this instance, Petitioner requests that the Commission adopt regulations in order to remedy a condition it alleges will result in irreparable harm to Petitioner's members.

II. SUMMARY OF PETITION

Petitioner argues that Transport Canada's proposed regulations to require the installation of ballast water management systems (BWMS) on Laker vessels will effectively drive out U.S.-flag vessels from the cross-lakes U.S. export trade to Canada. These regulations, which were proposed by Transport Canada on June 8, 2019, would require Canadian vessels and vessels in waters under Canadian jurisdiction to develop and implement a ballast water management plan and comply with a performance standard that would limit the number of organisms discharged, with a compliance date of September 8, 2024. *Ballast Water Regulations*, Canada Gazette, Part

1, Vol. 153, No. 23 at 15.

The proposed regulations would exempt vessels of a non-signatory party to the International Maritime Organization (IMO) International Convention on the Management of Ships' Ballast Water and Sediments, such as the United States, if those vessels operate exclusively within the Great Lakes Basin and do not load ballast water from or release ballast water into Canadian waters. Petitioner alleges that this exemption would not apply to its members' vessels because they need to load ballast water after offloading export cargo at Canadian ports, and that in order for its members' vessels to comply with the proposed regulations, they would need to install a BWMS on each vessel.

Petitioner argues that because of the vessel type and age differences between the Canadian and U.S. fleets, the respective costs of implementing the proposed regulations will be very different. Transport Canada estimates the cost of implementing the requirements on all Canadian vessels currently serving the trade would be approximately 632 million Canadian dollars. Petitioner argues that implementing these same regulations on all U.S. vessels currently serving the trade would cost nearly 1.132 billion Canadian dollars. Ultimately, Petitioner argues the proposed regulations will essentially double the U.S. Laker cost of participating in the trade while Canadian carriers would experience a less than 1 Canadian dollar per ton cost increase.

Petitioner argues that its members cannot comply with the regulations because of the prohibitive cost, and they cannot avoid the regulations and continue to carry United States exports to Canada because they must load ballast water as they offload cargo at Canadian ports. Petitioner also states that its members cannot operate their vessels outside of the Great Lakes and St. Lawrence River because of their ship design and current U.S. Coast Guard certification is restricted to service on the Great Lakes and St. Lawrence River. Should the regulations be

finalized and if U.S. vessels were thereby forced out of the trade, Petitioner contends that Canadian vessels would enjoy a monopoly on the cross-lakes U.S. export trade to Canada.

Petitioner argues that prohibiting the loading of ballast water without a BWMS serves no environmental purpose because, unlike discharging ballast water, loading ballast water in Canadian waters does not result in the potential introduction of nonnative organisms into Canadian waters. Petitioner asserts that the regulations serve no environmental purpose and the cost of compliance is prohibitively high for U.S. vessels, and suggests that the real purpose of the regulations is to drive out U.S. vessels from this trade.

Petitioner is asking the Commission to issue a regulation to meet the unfair competitive conditions created by Transport Canada. Petitioner has provided a proposed regulation that would assess a fee of 300,000.00 U.S. dollars each time a Canadian vessel enters any U.S. port.

III. INVESTIGATION AND INITIAL REQUEST FOR COMMENTS

The Commission has reviewed the Petition and determined that it meets the threshold requirements for consideration under the Commission's regulations. *See* 46 CFR part 550, subpart D. The Commission has therefore determined to initiate an investigation into whether the proposed Transport Canada regulations create unfavorable conditions to shipping in the foreign trade of the United States. To that end, the Commission has designated the Deputy Managing Director to lead an investigation into the Petitioner's allegations and to prepare a report on the investigation's findings and recommendations for Commission consideration.

As an initial step in the investigation, interested persons are requested to submit views, arguments and/or data on the Petition. Comments may address any aspect of the Petition.

As the Commission proceeds with this investigation, it may determine the need to request additional comment or gather information through other means as authorized under 46 U.S.C.

42104 and 46 CFR part 550.

By the Commission.

Rachel Dickon,

Secretary.

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