

**Title 7. Harbors and Navigation**  
**Division 2. State Board of Pilot Commissioners for the Bays of**  
**San Francisco, San Pablo, and Suisun**

**INITIAL STATEMENT OF REASONS**

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) proposes to amend the following sections of Title 7, California Code of Regulations<sup>1</sup>:

- **§ 211.5. Commission Investigator Minimum Standards.**
- **§ 213. Pilot Trainees.**
- **§ 215. Pilot and Inland Pilot Training.**
- **§ 218. Duties of Port Agent.**

**§ 211.5. Commission Investigator Minimum Standards.**

**PROBLEM STATEMENT**

The Board originally adopted § 211.5, concerning Commission Investigator minimum standards, in 2011 in order to implement, interpret, and make specific Harbors and Navigation Code (HNC) § 1156(e). The Board utilizes the services of Commission Investigators to investigate and report on misconduct or navigational incidents involving a vessel piloted by a Board-licensed pilot. Since maritime investigation services are not available in the civil service system, the Board retains the services of multiple private-sector investigators under a competitive procurement contracting process.

The Board has experienced a reduction in the number of investigators meeting the Commission Investigator minimum standards and willing to contract with the Board for intermittent, on-call maritime investigation services. The Board has re-evaluated the Commission Investigator minimum standards and determined that although the minimum standards were set at a high level in 2011 principally to attract the best qualified investigators, the minimum standards could be amended to ensure a sufficient supply of acceptably qualified investigators.

**BENEFITS OF THE REGULATORY ACTION**

The proposed regulations will amend the Commission Investigator minimum standards in order to retain a sufficient supply of investigators under contract at any one time, while also ensuring that the minimum standards are set to attract investigators that have acceptable knowledge, skill and ability to adequately perform investigator services.

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<sup>1</sup> Unless otherwise specified, all references to a section number herein, which may be denoted as §, are to sections contained in the Title 7 of the California Code of Regulations.

## **PURPOSE OF THE REGULATION**

The principal purpose of the proposed regulations is to slightly reduce the minimum number of years of experience and the rank of prior maritime positions held for several investigator minimum requirement options.

The proposed regulations would amend § 211.5(a)(1) to clarify that a Commission Investigator possess or have possessed a United States Coast Guard license as Master of Ocean, Near Coastal or Inland vessels of either not more than 1600 gross tons or any gross tons, instead of any gross tons. This proposed amendment clarifies that the investigator must have specific expertise and knowledge of the large vessels that Board-licensed pilots navigate.

The proposed regulations would amend § 211.5(a)(2) to lower the number of years of experience an investigator has served as chief engineer under the authority of a United States Coast Guard license from two to one. The Board has determined that one year of such experience would be sufficient.

In § 211.5(a)(3), the proposed regulations would still require an investigator to have a bachelor's degree, but no longer require that that degree be from a maritime academy. The Board has determined that a bachelor's degree provides minimum assurances that an investigator has adequate analytical and writing abilities, and that the other Commission Investigator minimum requirements focus sufficiently on maritime knowledge, skills and abilities.

In § 211.5(a)(4), the proposed regulations would correct the title of the officer referenced in the Marine Inspection San Francisco Bay Instruction 16271 or successor thereto to Officer in Charge.

In § 211.5(a)(5) and (6), the proposed regulations would reduce the number of years of experience from three to two as chief mate or first assistant engineer, or as a senior marine Coast Guard investigating officer. The proposed regulations would also alter the investigating officer requirements to no longer require that that experience be in charge of an investigation or as a Commander, but rather can be gleaned while at the rank of a Warrant Officer or above. The Board has determined that such experience would be sufficient. Lastly, the proposed regulations would correct the title of the referenced first assistance engineer to first assistant engineer.

The proposed regulations would clarify that the requirements of this section apply to an applicant, and amend § 211.5(b) to reduce the minimum experience as a shoreside marine investigator from two years to one.

The proposed regulations also make a technical amendment to move the definition of a year of experience to a new subsection (c), and clarify that the definition applies to all years of experience requirements identified in subsections (a) and (b).

Lastly, subsection (c) is renumbered to subsection (d) to accommodate the new subsection (c) that now contains the definition of a year of experience.

## **NECESSITY**

Commission Investigators investigate navigational incidents or incidents involving pilot misconduct. Commission Investigators are overseen by the Board's Executive Director and report directly to the Executive Director or other members of the Board's Incident Review Committee (IRC).

Commission Investigator services are on an on-call, as-needed basis. An investigator may be requested to report anywhere within the Board's jurisdiction within hours of an incident. The Board's pilotage jurisdiction includes the various bays in the San Francisco Bay area, Monterey Bay, the tributaries to Stockton and Sacramento, and includes 70 separate terminals in ten counties. As such, it benefits the Board to have multiple investigators under contract at any one time, and have those investigators based throughout the pilotage area.

The Board did not rely on any technical, theoretical, or empirical studies, reports or documents in proposing the Commission Investigator minimum standards in 2011. Instead, the Board relied upon the expertise of its Rules and Regulations Committee members, which consisted of Board-licensed pilots and other Board members who have experience in the maritime industry. The Board's Executive Director, himself an experienced mariner, also contributed to the establishment of the Commission Investigator minimum standards.

During 2011-2014, the Board contracted with five Commission Investigators, all under three-year contracts at the same time. Upon contract renewal in 2014, the Board was able to contract with only two investigators under multi-year contracts. The Board's Executive Director determined that two causes principally drove the reduction in number of contracted Commission Investigators. First, there is weak interest from potential investigators to be on call for intermittent work. Commission Investigators are paid only for work performed. Incidents can occur at any time of the day or night, or not at all during the term of a contract. As such, there is no guarantee of any work during a Commission Investigator contract term.

Second, the Board decides the action to be taken upon the occurrence of an incident, pilot misconduct or other matter involving a Board-licensed pilot. The Board's incident/misconduct determination decision is based upon a report from the Board's IRC. The IRC report includes the report provided by a Commission Investigator. Given the potentially serious consequence to a Board-licensed pilot resulting from an investigation, the Commission Investigator minimum standards were intentionally set high in 2011, to ensure that the Board would attract the best qualified investigators.

Given the necessity to retain multiple Board-contracted Commission Investigators, and the Board's lack of control over the number of occurrences of Board-licensed pilot misconduct or incidents, the Board revisited the Commissioner Investigator minimum standards and determined that the standards could be marginally amended principally by reducing the number of years of specified experience to meet the desirable goal of attracting multiple, adequately qualified investigators under contract.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Board has determined that there is no reason to believe that the hourly rate paid to Commission Investigators will be increased because of the proposed regulations that relax several of the Commission Investigator minimum requirements. Rather, the proposed regulations are designed to increase the candidate pool of eligible and qualified Commission Investigators. If the candidate pool is larger during a competitive procurement process, there is reason to believe the Board could pay lower hourly Commission Investigator rates due to the competition among bidders. However, the potential for lower Commission Investigator hourly rates due to a larger candidate pool is speculative at best given the likely small number of investigators submitting bids in response to a competitive procurement process. As such, the Board has determined that there is not a sufficiently measureable economic impact from the proposed regulations.

The Board concludes that the proposed regulations in § 211.5 will:

- (1) Unlikely eliminate any jobs within the state.
- (2) Unlikely create jobs within the state. A larger Commission Investigator candidate pool could lead the Board to contract and have on retainer a few more though.
- (3) Unlikely create new businesses in the state. It is likely that an investigator who meets the amended Commission Investigator minimum qualifications is already a sole proprietor (small business).
- (4) Unlikely eliminate any existing businesses.
- (5) Unlikely affect the expansion of businesses currently doing business in the state since investigators that contract with the Board are sole proprietors (small business).
- (6) Likely benefit the health and welfare of California's residents, worker safety and the state's environment if maritime incidents connected to a Board-licensed pilot are investigated swiftly, thoroughly and accurately.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

All current and past Commission Investigators have been sole proprietor (small business) businesses. The Board retains the individual investigator for his maritime investigative skills, knowledge and expertise. No part of an investigation can be subcontracted out.

The proposed regulations are designed to ensure an increase in the pool of qualified Commission Investigators. Historically, the Board has contracted with as many as five Commission Investigators at any one time. The Board projects that the proposed regulations would likely not impact the maximum number of Commission Investigators it contracts with at any one time much beyond five investigators.

As such, the Board has determined that there is no significant statewide adverse economic impact directly affecting business, including small businesses.

## **REASONABLE ALTERNATIVES TO THE REGULATION AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Board has concluded that there are no reasonable alternatives to the proposed regulations.

## **§ 213. Pilot Trainees.**

### **PROBLEM STATEMENT**

Examination Fee. The Legislature has required the Board to establish an examination fee for applicants seeking admission to the Board's Pilot Trainee Training Program (HNC § 1171.6(a)).

HNC § 1171.6(a) provides as follows:

There shall be an examination fee to be charged in an amount established by the board to each applicant to the pilot trainee training program who participates in any written or simulator examinations established by the board for the purposes of determining admission to the pilot trainee training program pursuant to subdivision (d) of Section 1171.5. The fee shall be charged only to those who actually participate in an examination and shall not exceed the administrative costs to the board of preparing and administering the examination.

As required by HNC § 1171.5, the Board conducts a Pilot Trainee Training Program and determines standards for admission to the program. Only trainees who successfully complete the training program are eligible for licensure as pilots by the Board (HNC § 1171.5(g)). Among other requirements for admission to the training program, applicants must pass both a written examination component and a bridge simulator exercise component (§ 213(h) and (i)).

Currently, applicants for admission to the training program do not pay an examination fee. Four problems arise from applicants being allowed to take the examinations free of charge. First, the written examination and simulator exercise offer a no-cost opportunity for simulator training and preparation for tests administered by other jurisdictions. Applicants meeting the examination admission requirements who have no intention of becoming Board-licensed pilots can participate in both the written examination component and the bridge simulator exercise component for test-taking experience purposes. Such applicants do so because both examinations have a good reputation for being rigorous and are free. Other sources of similar examination preparation are available only for a fee.

Second, Board staff spend many hours verifying the command time and maritime experience that is required for admission to the examination. (See § 213(e) and (f).) This staff work would essentially be wasted regarding those applicants who have no intention of enrolling in the program.

Third, participation of such applicants in the bridge simulator exercise threatens the integrity of that examination component. Each applicant participates in an identical bridge simulator exercise. There is a single simulator, and each exercise is administered to a single applicant, one at a time over a number of days. Ordinarily, the competitive impulse would be to have one's

score exceed that of other applicants, which would discourage the sharing of examination information. However, this serial simulator examination component process creates a danger that those applicants who complete the earlier simulations will share the contents of the simulation with others who come after them. This potential for breach of examination security would be enhanced for those applicants who are not interested in seeking admission to the program, but rather wish to take advantage of a cost-free test preparation opportunity.

Finally, preparation and administration of the two examination components is costly. The last training program entrance examination, conducted in 2014, cost approximately \$207,400 to develop and administer, not including the cost of time spent by Board staff or that of the pilots from the San Francisco Bar Pilots, who helped prepare and administer the written examination and the simulator exercises. As indicated above, the applicants who take the program entrance examination currently contribute nothing toward defraying this examination implementation cost.<sup>2</sup>

References to 2014 Examination. Effective April 1, 2014, specific Pilot Trainee Training Program entrance examination requirements were included in § 213 for applicants applying only to the Pilot Trainee Training Program examination given by the Board in 2014. That examination was completed in July 2014. Since the 2014 examination has been completed, the regulatory references to the 2014 examination are no longer operative and should be deleted.

Examination Technical Expertise. Existing regulations contained in § 213(h) and (i) require the Board to obtain training program examination preparation and administration assistance from either the Office of Examination Resources (OER) or, if the Board contracts for examination administration assistance, from a psychometrician with equivalent qualifications of OER staff.

OER has changed its name to the Office of Professional Examination Services (OPES), and continues to be an office within the Department of Consumer Affairs. OPES has stated that it likely will not have the resources to assist the Board with the administration of an examination or to provide review oversight of a Board-contracted psychometrician in the foreseeable future, and would only be able to do so for entities within the Department of Consumer Affairs. It is therefore necessary to amend § 213(h) and (i) to allow the Board to administer an examination without OPES involvement in the event that OPES staff are unavailable.

Other Minor Clarifying Technical Amendments. The proposed regulations eliminate a two-tier scoring system, clarify the definition of a passing score for both the written examination and the simulator exercise, and make other technical amendments for purposes of clarity.

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<sup>2</sup> The foregoing concerns contained in this section are summarized in the various bill analyses prepared during the passage through the Legislature of the bill that included Section 1171.6. (See, e.g., Assem. Com. on Transportation, Analysis of Assem. Bill No. 1025 (2011-2012 Reg. Sess.) dated Apr. 8, 2011, p. 3; Assem. Com. on Appropriations, Analysis of Assem. Bill No. 1025 (2011-2012 Reg. Sess.) dated May 3, 2011, p. 2.)

## **BENEFITS OF THE REGULATORY ACTION**

Examination Fee. The proposed regulation will have the following benefits: (1) it will deter those who take advantage of the Board's free examination process for their own personal edification, having no intention of enrolling in the Board's training program or becoming licensed by the Board; (2) it will increase the efficiency of Board staff by reducing the staff time devoted to reviewing the applications of persons who are not applying to the training program in good faith; (3) it will strengthen the security of the Board's bridge simulator exercise and thus ensure that only truly qualified applicants are admitted to the training program, thereby ultimately benefiting public health and safety, worker safety, and the environment; and, (4) it will help defray the cost of preparing and administering the two examinations that are required for admission to the training program.

References to 2014 Examination.

Examination Technical Expertise.

Other Minor Clarifying Technical Amendments.

The proposed regulation will delete obsolete provisions, clarify and make current the Pilot Trainee regulations, and provide flexibility to the trainee examination administration process.

## **PURPOSE OF THE REGULATION**

Examination Fee. In compliance with the statutory requirement to charge applicants for admission to the Pilot Trainee Training Program an examination fee that does not exceed the administrative costs to the Board of preparing and administering the examination, the proposed regulation would add subsection (e)(7) to § 213 of the Board's regulations, to read as follows:

Pay to the Board on submission of an application for admission to the Pilot Trainee Training Program an examination fee of \$1,000 for participation in the written examination and bridge simulator exercise provided for in this section. The Board shall refund this entire fee to the applicant if the applicant does not take the written examination. If the applicant takes the written examination but does not participate in the simulator exercise, the Board shall refund \$500 of the examination fee to the applicant.

References to 2014 Examination. To delete inoperative references to the 2014 Pilot Trainee Training Program examination, the proposed regulations would delete the following subsections (or portion thereof as marked) of § 213:

- (e)(3)(C)
- (e)(4)(B) (the portion that references (e)(3)(C))
- (f) (the portion that references (f)(1)(E), (f)(2)(F), and (f)(3)(C))
- (f)(1)(E)



- (f)(2)(F)
- (f)(3) (the parenthetical that references (f)(3)(C))
- (f)(3)(C)

Examination Technical Expertise. The proposed regulations would amend § 213(h) and (i) to allow the Board to continue to obtain examination preparation and administration technical expertise from one or more qualified psychometricians with qualifications equivalent to the psychometricians employed by OPES. The proposed regulations would delete references to psychometricians employed by a specified state entity, but require a psychometrician to meet the same qualifications as psychometricians employed by the state.

Other Minor Clarifying Technical Amendments. The proposed regulations would also effect several other minor, technical amendments principally for clarity purposes. The proposed regulations would delete the reference to an exam cutoff score found in § 213(i), but leave several references to a “passing” score, which eliminates confusion.

The proposed regulations would also amend § 213(h) and (i) to clarify that both the written examination and the bridge simulator exercise will utilize a criterion-referenced methodology to establish a passing score, which has been the examination methodology used by the Board for training program entrance examinations given since 1996, and would further clarify in that same section that a passing score reflects the lowest score that a candidate could obtain and meet minimum competence standards.

To clarify that the simulator examination exercise of the training program entrance examination is a “bridge” simulator exercise, the proposed regulations make minor technical amendments to § 213(i) and (j).

Lastly, the proposed regulations make a minor grammatical correction for clarity purposes to § 213(e)(6).

## **NECESSITY**

Examination Fee. The Board has proposed the following examination fees: \$500 for the written examination component and \$500 for the bridge simulator exercise component. The Board has three goals in setting the fees at this amount: (1) deterring applicants who have no intention of enrolling in the Pilot Trainee Training Program or becoming licensed by the Board; (2) not setting the fee so high that qualified persons who intend to enroll in the program and obtain a license from the Board would be discouraged from applying because of the cost; and (3) recovering some of the cost of preparing and administering the examinations.

There is tension between the first two goals. Setting the fee at a very high level would certainly deter those merely seeking training and test-taking experience, but such a fee could also discourage legitimate applicants whom the Board needs to train in order to maintain a supply of

qualified pilots who can be licensed and replace those licensed pilots who cease piloting because of retirement or for other causes. The Board exercised its best judgment in setting the fee at this amount. If future experience suggests that the fee for either examination component needs to be adjusted up or down to better achieve these competing goals, then the Board can make necessary fee adjustments at that time.

A total examination fee of \$1,000 will be collected upon submission of the application to the Board for admission to the program. This one-time collection of the fee upon submission of the application will be more efficient than trying to collect two separate fees from examination participants in the field<sup>3</sup>—one after staff has determined that an applicant is qualified and is about to participate the written examination component, and the other after an applicant's successful completion of the written examination, but prior to an applicant participating in the bridge simulator exercise component.

Since HNC § 1171.6(a) authorizes a fee only for actual participation in the exams, fee refunds will be necessary because staff, after reviewing the materials supporting each application, will later determine that some applicants are unqualified to take the written examination component, which is the first of the two examination components, and because other applicants will not qualify to participate in the bridge simulator exercise because they did not pass the written examination component.

Based on cost figures for preparation and administration of the most recent examination for admission to the training program, which was conducted in 2014, the Board has concluded that the proposed examination fee will comply with the requirement of Section 1171.6(a) that the fee, "[n]ot exceed the administrative costs to the Board of preparing and administering the examination."

Preparation and administration services for the 2014 written examination and the bridge simulator exercise were provided to the Board by consultants and staff of and facilities at the California Maritime Academy. The total cost to conduct the 2014 examination was approximately \$207,400, itemized as follows: (1) psychometric examination services (\$100,000); (2) California Maritime Academy simulator usage and testing facilities (\$36,800); (3) simulation development services (\$57,000); (4) simulator exercise evaluations (\$7,400), and advertising (\$6,200). Board staff time, including Board legal counsel services, was not calculated or included in these figures. Neither were the thousands of hours contributed by members of the San Francisco Bar Pilots who helped in preparing both the written examination and the bridge simulator exercise.

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<sup>3</sup> The Board's current office is not conducive to conducting either examination component onsite. The examinations given in 2010 and 2014 were conducted at the California Maritime Academy facilities.

In 2014, 51 persons applied for admission to the training program, and 33 were found eligible and took the written examination component. Examination fees from those 33 applicants at \$500 per applicant would have generated \$16,500 in fees. Of the 33 applicants who took the written examination component, 25 passed the written examination component and continued on to participate in the bridge simulator exercise component. Examination fees from those 25 applicants at \$500 per applicant would have yielded an additional \$12,500. Total application fees for the training program entrance examination given in 2014 would have been \$29,000 if the proposed fees were in place for that examination, which would have been approximately 15 percent of the known cost of preparing and administering that examination.

References to 2014 Examination. As stated above, because the 2014 examination was completed in June 2014, the regulatory references to the 2014 examination are no longer operative and the proposed regulations delete these outdated regulations.

Examination Technical Expertise. OPES informed the Board that its primary mission is to provide examination services for divisions within the Department of Consumer Affairs, and that it does not have testing staff availability to assist the Board.

Similar to OPES, the California Department of Human Resources (CalHR) also provides psychometric services to other state entities. However, CalHR has also indicated to Board staff that it may not have the capacity to meet the Board's need for psychometric services given the timing and other requirements of an examination.

Government Code § 19130 requires, among other things, the Board to first determine that the services to be contracted for are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system. Given this statutory contracting requirement, the proposed regulations allow the Board maximum flexibility to obtain qualified psychometric examination services from state entities if available; and, if not available from these sources, to obtain these examination services from psychometricians employed by other governmental or private sector contractors that have the same qualifications as the psychometricians employed by the state.

Other Minor Clarifying Technical Amendments. The proposed regulations clarify that the examination methodology will be criterion-referenced, as opposed to a norm-referenced or an ipsative-referenced examination. In a criterion-referenced assessment, the score reflects whether a test taker performed well or poorly on a given task. In comparison, a norm-referenced assessment refers to the process of comparing one test-taker to his or her peers, and in an ipsative assessment, test takers are compared to previous performance. The latter two types of testing are not useful to the Board in determining whether a training program applicant has sufficient knowledge, skills and abilities to enter the program. The Board has utilized a criterion-referenced methodology for all examinations since 1996.

The proposed regulations also make other minor technical amendments for clarity purposes.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of these regulations.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

Examination Fee. Applicants to the Pilot Trainee Training Program and the Board will be affected by the imposition of a training program examination fee. Applicants will be required to pay a \$1,000 fee with a training program application, which includes a \$500 fee to participate in the written examination component, and a \$500 fee to participate in a bridge simulator exercise component. The Board will refund the entire fee to any applicant who does not take the written examination and refund \$500 of the application fee to an applicant who takes the written examination, but does not participate in the bridge simulator exercise.

Based upon the Pilot Trainee Training Program entrance examination that was given in 2014, 33 applicants took the written examination. Twenty-five applicants passed the written examination and participated in the bridge simulator exercise. Had the proposed examination fee structure been in place at the time of the 2014 program entrance examination, the Board would have collected \$29,000. The number of program applicants participating in past entrance examinations is not markedly different than the number of applicants who participated in the 2014 examination. As such, the Board does not anticipate the total economic impact in future training program entrance examinations will be much greater than or much less than \$29,000 if the proposed fees are charged.

References to 2014 Examination.

Examination Technical Expertise.

Other Minor Clarifying Technical Amendments.

There are no other economic impacts anticipated for the other §213 proposed regulations.

The Board concludes that the proposed regulations in § 213 will:

- (1) Unlikely eliminate any jobs for psychometricians.
- (2) Unlikely create jobs for psychometricians. The Board historically has contracted with one psychometrician every 2-4 years. This rate of work will not likely impact the number of available psychometricians.
- (3) Unlikely create any new businesses providing psychometrician services. Becoming a psychometrician is a multi-year endeavor, typically involving advanced degrees in psychology, statistics and related fields.
- (4) Unlikely eliminate any existing businesses.

- (5) Unlikely affect the expansion of businesses currently doing business in the state.
- (6) Will likely benefit the health and welfare of California's residents, worker safety and the state's environment since a qualified psychometrician will still assist the Board to conduct rigorous, job-relevant Pilot Trainee Training Program entrance examinations.

### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

Examination Fee. The proposed regulations will not have any economic impact on business. The examination fee will be charged only to individuals who choose to participate in the Pilot Trainee Training Program entrance examination components administered by the Board to determine admission to its Pilot Trainee Training Program. The Board administers these examinations on an as-needed basis, which historically has been every two to four years. The examination fee will affect a group of up to approximately 60 individuals who submit an application for admission to the Board's Pilot Trainee Training Program. The Board will retain the entire fee from applicants who participate in both entrance examination components, and refund \$500 to applicants who do not participate in the bridge simulator exercise component.

Applicants who enter and successfully complete the Pilot Trainee Training Program conducted by the Board may apply to the Board for licensure as pilots, if and when positions become available. The Board sets the number of licensed pilots. Board-licensed pilots become members of the San Francisco Bar Pilots, a private organization. The proposed examination fee will affect neither the number of licensed pilots nor the San Francisco Bar Pilots. Nor will the fee affect businesses using the services of the pilots or any other business in California.

Examination Fee.

References to 2014 Examination.

Examination Technical Expertise.

Other Minor Clarifying Technical Amendments.

The proposed regulations for the above-referenced matters will have no significant statewide impact to businesses.

The Board did utilize the services of a contracted private-sector psychometrician for program examinations given in 2010 and 2014. Since in the past only one psychometrician is hired per examination, examinations are held every two to four years, and contract amounts are equal to or less than \$100,000, the Board has determined that there is no significant impact to business from the proposed regulations.

## **REASONABLE ALTERNATIVES TO THE REGULATION AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

Examination Fee. There is no alternative to establishing an examination fee; HNC § 1171.6 requires that the Board establish such a fee.

It is possible that there is an examination fee lower in amount (and therefore less burdensome) that could achieve at least some of the Legislature's objectives, but, as stated above, determination of an appropriate fee requires an exercise of judgment. The Board's best judgment at this time, without the benefit of any future experience with the fee, is that the proposed fee will have the desired deterrent effect on those who are not legitimate candidates for ultimate licensure by the Board without being unduly burdensome to those who, in good faith, intend to enroll in the Pilot Trainee Training Program and become pilots licensed by the Board.

References to 2014 Examination. There is no alternative to deleting the references to an expired examination.

### Examination Technical Expertise.

There is no alternative to acknowledging that the Department of Consumer Affairs has not had the capacity to provide the Board with psychometric expertise for the prior two examinations. Given that the California Department of Human Resources employs psychometricians in the Test Validation and Development Specialist civil service personnel classification and might have staff available to assist the Board with future examinations, there is no other alternative than to allow the Board the opportunity to retain the services of psychometricians from any state entity. And, if psychometricians are not available within the state civil service system, then the proposed regulations allow the Board to contract with another governmental entity or a private sector entity for the services of a psychometrician who has qualifications equivalent to the psychometricians employed by the state.

Other Minor Clarifying Technical Amendments. There is no alternative to the proposed minor technical amendments since the technical amendments add clarity to the regulations.

## **§ 215. Pilot and Inland Pilot Training.**

### **PROBLEM STATEMENT**

Section 215 of the existing regulations sets forth the requirements of a pilot training program. The pilot training program, also known as the pilot continuing education program, is separate and distinct from the training program provided to trainees in the Pilot Trainee Training Program.

Section 215 implements, interprets, and makes specific HNC § 1171.5, which requires the Board to develop regulations for continuing education standards and a continuing education program for licensed pilots. The Board has established those continuing education standards and the program in § 215. The required training consists of two parts—a manned scale model shiphandling course and a combination course covering a variety of topics. The existing regulation requires pilots to attend both courses every five years.

For clarity and to ensure that all required combination course topics are included in one section of the regulations, the Board now desires to update the combination course topics listing to include fatigue management as required elsewhere in the HNC (see HNC § 1144), and to add radar navigation in low visibility/restricted waters, which topic recommendation was made to the Board for its consideration by the United States Coast Guard in January 2015 in its investigation report concerning the M/T OVERSEAS REYMAR incident.

The Board has also determined that other technical amendments need to be made to this section to remove references to “inland pilot,” because that class of pilots has ceased to exist, and to make other minor technical amendments to the references in this section.

### **BENEFITS OF THE REGULATORY ACTION**

The Board has determined that it is beneficial to have all combination course required topics listed in the regulations, and to bring the regulations current with other technical amendments.

### **PURPOSE OF THE REGULATION**

The proposed regulations require that the combination course training include training on (1) the hazards of fatigue and effective strategies to prevent fatigue while on duty, and (2) radar navigation in low visibility/restricted waters. The addition of the two new topics will cause a renumbering of topics in the section.

The proposed regulations will also delete references to inland pilots, because that class of pilots has ceased to exist. Lastly, the proposed regulations make minor technical amendments to the references for the section.

## **NECESSITY**

The addition of two new topics to the minimum topics to be covered in the combination course training will ensure that the course sufficiently covers the necessary topics the Board and the Legislature have determined should be covered in this course.

Additionally, the technical amendments to delete obsolete references will bring the regulations current.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Board contracts with the California Maritime Academy (CMA) for combination course training. The current interagency agreement between the Board and CMA requires CMA to ensure that all combination course curriculum requirements contained in the HNC and the regulations are included in a five-day combination course training. Additionally, the Board and CMA have agreed that the combination course training may include additional training topics not listed in regulation. Fatigue management is already included in the current combination course provided to pilots by CMA.

The interagency agreement requires the Board to pay \$32,750.00 for a training class of six pilots, with an additional \$5,458.33 added to the invoice for each additional pilot over six attending the class. As stated above, the current course fee includes training on fatigue management. The Board does not anticipate that the addition of a course topic on radar navigation in low visibility/restricted waters will increase the cost of providing the combination course training, particularly since other non-required course topics are anticipated to be dropped for combination course training classes being taught in 2016. As such, the Board does not anticipate that there will be an economic impact resulting from the proposed regulations.

The Board concludes that the proposed regulations in § 215 will:

- (1) Unlikely eliminate any jobs within the state.
- (2) Unlikely create jobs within the state. The Board historically has contracted with CMA to provide pilot combination course training. CMA does hire instructors, but the number of instructors necessary for the combination course training is not likely change.
- (3) Unlikely create any new businesses providing pilot training services in the state.
- (4) Unlikely eliminate any existing businesses.
- (5) Unlikely affect the expansion of businesses currently doing business in the state.



- (6) Likely benefit the health and welfare of California's residents, worker safety and the state's environment since pilot training in radar navigation in low visibility/restricted waters is anticipated to improve a pilot's skill in shiphandling in adverse conditions.

#### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

Pilots attending training are attending as individuals. The proposed regulations add two types of training to the combination course training curriculum. The combination course training is provided by CMA, a state entity. The Board anticipates that CMA will continue to provide combination course training to pilots in the foreseeable future. Thus, the Board has concluded that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses.

#### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Board has determined that there are no reasonable alternatives to the proposed regulations.

Fatigue management is a statutorily required combination course requirement, and is being included in the regulation for clarity purposes so that all combination course training topics are found in one location.

The Board has determined that the addition of training on radar navigation in low visibility/restricted waters to the combination course training topics is reasonable in light of the United States Coast Guard recommendation. The Board has determined that this additional topic to combination course training curriculum is appropriate to ensure that pilots are receiving adequate and effective ongoing education.

## **§ 218. Duties of Port Agent.**

### **PROBLEM STATEMENT**

Existing regulations in § 218 identify and set forth the specific duties of a Port Agent, who is a pilot licensed by the Board and selected by the other pilots, and set forth specific duties of the Port Agent. One of the duties identified in the existing regulations involves the assigning of pilots to vessels, including the assigning of a supervisory pilot to specified vessels that are navigated by pilots who were recent graduates of the Pilot Trainee Training Program and were licensed by the Board in the previous 12, 18, or 24 months.

All navigation assignments performed by trainees in the Board's Pilot Trainee Training Program are supervised by either a member of the Pilot Evaluation Committee, who all have ten or more years of experience as a Board-licensed pilot, or a pilot who has more than two years of experience as a Board-licensed pilot. Trainees who successfully complete the training program are licensed by the Board commensurate with the Board-determined need for licensed pilots.

Section 218(d)(1) requires the Port Agent to assign pilots to vessels, and to assign a supervisory pilot to accompany any pilot initially licensed by the Board in the prior 12, 18, or 24 months when that newly licensed pilot is navigating certain-sized vessels, unless the vessel is proceeding directly from sea to anchorage or from anchorage to sea. These types of supervisory assignments are deemed necessary to ensure the safety of the public and the environment.

Cargo ships have increased in size over the years, and pilot trainees in the Board's Pilot Trainee Training Program are now routinely obtaining experience training on these larger ships during the course of a one-to-three year Pilot Trainee Training Program conducted by the Board. Since trainees in the Board's Pilot Trainee Training Program are routinely training on larger and larger ships, the Board proposes to increase the size of dry cargo vessels for which the Port Agent must assign a supervising pilot when those vessels are navigated by a pilot licensed by the Board in the previous 12 or 18 months. This will avoid unnecessarily doubling up on licensed pilots in situations where there is no measureable increase in public safety and safety to the environment by having two licensed pilots aboard a vessel. Additionally, the Board desires to ensure that its regulations facilitate the Port Agent's ability to more effectively manage pilot assignments.

### **BENEFITS OF THE REGULATORY ACTION**

Increasing the size of certain dry cargo vessels for which a supervisory pilot must accompany a pilot newly licensed in the past 12 or 18 months will increase the availability of pilots. Such increase in the size of a dry cargo ships requiring a supervisory pilot is not anticipated to affect the public health and safety or the environment, since the pilot trainees are routinely training on the larger dry cargo vessels while in the Pilot Trainee Training Program.

## **PURPOSE OF THE REGULATION**

Section 218(d)(1)(A) requires the Port Agent to assign a supervisory pilot when assigning pilots who have been licensed by the Board 12 months or less to specified vessels unless the vessel is proceeding directly from sea to anchorage or from anchorage to sea and, for outbound vessels, does not require turning. The proposed regulations would make a change to one certain kind of vessel that requires a supervisory pilot when such a vessel is navigated by a pilot who has been licensed by the Board for 12 months or less by amending § 218(d)(1)(A)(3) to increase the length of a dry cargo vessel by 50 feet from 925 to 975 feet.

Similarly, § 218(d)(1)(B) requires the Port Agent to assign a supervisory pilot when assigning pilots who have been licensed by the Board 18 months or less to specified vessels unless the vessel is proceeding directly from sea to anchorage or from anchorage to sea and, for outbound vessels, does not require turning. The proposed regulations make a change to one certain kind of vessel that requires a supervisory pilot when such a vessel is navigated by a pilot who has been licensed by the Board for 18 months or less by amending § 218(d)(1)(B)(3) to increase the length of a dry cargo vessel by 25 feet from 975 to 1,000 feet.

## **NECESSITY**

Regulations designating the size of ships requiring a supervisory pilot for ship movements being navigated by newly licensed pilots were originally adopted in 1988. Dry cargo ship sizes requiring a supervisory pilot for newly licensed pilots were amended to increase the length of a dry cargo ship by 25 feet in 2011 because trainees were training on the larger ships while in the Pilot Trainee Training Program.

Dry cargo ships today are even larger than they were in 2011. As such, trainees in the Pilot Trainee Training Program are receiving training on these larger vessels and no longer need the direct supervision of a supervisory pilot on certain-sized dry cargo vessels. The Port Agent estimates that increasing the size of a dry cargo ship for which a supervisory pilot must be assigned by 50 feet more than previously specified will free up on average an estimated 11 pilots a month, allowing the Port Agent to assign these pilots to other vessels, which will also aid more effective management of pilot assignments.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

There are no economic impacts anticipated for the proposed regulations.

The Board concludes that the proposed regulations in § 218 will:

- (1) Unlikely eliminate any jobs within the state.
- (2) Unlikely create jobs within the state.
- (3) Unlikely create any new businesses providing pilot training services in the state.
- (4) Unlikely eliminate any existing businesses.
- (5) Unlikely affect the expansion of businesses currently doing business in the state.
- (6) Likely benefit the health and welfare of California's residents, worker safety and the state's environment since the proposed regulations avoids doubling up on pilot assignments, potentially avoiding minimum rest period violations while maximizing pilot availability to adequately meet shipping demands.

#### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

There is no anticipated significant statewide adverse economic impact directly affecting business for the proposed regulations. The proposed regulations will ensure a sufficient supply of licensed pilots available to meet shipping demands.

#### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Board has determined that there are no reasonable alternatives to the regulations. Maintaining the status quo on the size of dry cargo vessels will result in an inefficient assignment of pilots to vessels by requiring the Port Agent to unnecessarily double licensed pilots assigned to certain dry cargo vessels with no measurable improvement in piloting services, and potentially negatively impacting the number of licensed pilots available to meet shipping industry demands.