

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

660 Davis Street, San Francisco, CA 94111
Phone: (415) 397-2253 Fax: (415) 397-9463
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NOTICE OF PROPOSED RULEMAKING March 25, 2016

NOTICE IS HEREBY GIVEN that the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Amendments are proposed to the following sections of the California Code of Regulations, Title 7, Harbors and Navigation, Division 2:

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

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, not later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (415) 397-9463 or by e-mail to bopc@ca.gov. The written comment period closes at **5:00 p.m. on May 9, 2016, 2015**. The Board will consider only comments received at the Board office by that time. Submit comments to:

Allen Garfinkle, Executive Director
Board of Pilot Commissioners for the Bays of
San Francisco, San Pablo, and Suisun
660 Davis Street
San Francisco, California 94111

AUTHORITY AND REFERENCE

Harbors and Navigation Code (HNC) §§ 1154, 1156, 1171.5 and 1171.6 authorize the Board to adopt these proposed regulations. The proposed regulations implement, interpret, and make

specific Harbors and Navigation Code §§ 1100, 1101, 1144, 1156, 1171, 1171.5, 1171.6, 1175, 1176, 1176.5, 1177, 1178, 1181, and Title 49, Code of Federal Regulations, Part 40.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

§ 211.5. Commission Investigator Minimum Standards. The Board utilizes the services of Commission Investigators to investigate and report on navigational incidents involving a vessel piloted by a Board-licensed pilot or instances of pilot misconduct. Existing regulations contained in § 211.5 set forth the minimum standards for Commission Investigators, and allow for a person to meet one or more of several requirement options to become a qualified investigator. The proposed regulations would decrease the required experience time period by one year for several of the existing minimum experience requirement options. The proposed regulations maintain the bachelor's degree requirement, but delete the requirement that the degree be from a maritime academy. The proposed regulations would also clarify the tonnage of a ship on which the investigator served as a licensed officer for one minimum requirement option, and reduce the maritime career rank of another minimum requirement option. Lastly, the proposed regulations clarify that the definition of a year applies to all work experiences having a time requirement in this section.

§ 213. Pilot Trainees. The Board operates a Pilot Trainee Training Program. This section of the existing regulations sets forth the requirements of and the process for entrance into the training program. The proposed regulations would make several amendments, including: adding a new requirement for program applicant participants to pay an entrance examination fee; deletion of regulations that applied to an examination given in 2014; deletion of references to the Office of Examination Resources of the Department of Consumer Affairs and stating the qualifications of the psychometricians who will provide examination assistance in program entrance examinations; and making other minor clarifying technical amendments.

HNC § 1171.6 requires the Board to establish an examination fee for applicants seeking admission to the Board's Pilot Trainee Training Program. Currently, applicants for admission to the training program do not pay an examination fee, which results in four identifiable problems. Charging an entrance examination fee will (i) deter applicants taking the Board's rigorous examination simply for test-taking practice; (ii) eliminate Board staff time wasted reviewing applications for those candidates who have no intention of entering the program; (iii) assist with maintaining the integrity of the bridge simulator examination component because applicants are serially tested one at a time in the simulator with the same simulation exercise, and a candidate who has no intention of attending the training program could share the contents of the simulation with another participant who has yet to complete the simulation exercise; and, (iv) defray the costs of the implementing the program entrance examination.

The proposed regulations would require that Pilot Trainee Training Program applicants pay a \$1,000 fee upon submittal of an application. The proposed regulations would require the Board to refund the entire application fee for any applicant who does not take the written examination, and refund \$500 of the application fee to any applicant who takes the written examination, but does not participate in the bridge simulator exercise. The Board determined that the \$1,000 program application fee is set at an appropriate level to not deter qualified applicants interested in participating in the training program, but to sufficiently deter applicants who only wish to take the program entrance examination for test-taking experience purposes, and would satisfactorily partially defray the cost to the Board of administering the examination.

The proposed regulations would delete existing regulations that applied only to the Pilot Trainee Training Program entrance examination given in 2014. That examination was completed in July, 2014.

Existing regulations contained in § 213(h) and (i) refer to the Office of Examination Resources (OER), an office within the Department of Consumer Affairs, in connection with training program examination administration assistance. OER still exists within the Department of Consumer Affairs, but under a new name—Office of Professional Examination Services (OPES). OPES is now unable to provide the Board with examination administration assistance. Other State entities employ psychometricians. However, the availability of psychometricians from another state department is unknown. The proposed regulations allow the Board maximum flexibility to obtain psychometric examination services from any state department, and, if not available from these sources, then the Board could obtain examination services from psychometricians employed by other governmental or private sector contractors meeting the same qualifications as the psychometricians employed by the state.

The proposed regulations would also make several minor clarifying technical amendments and add a description of the examination methodology, clarify several references to the simulator exercise as a bridge simulator exercise, clarify the passing score concept for both the written examination and the simulator exercise and the criteria it is based upon, and make one minor technical amendment to the listing of the examination minimum qualifications.

§ 215. Pilot and Inland Pilot Training. Section 215 of the existing regulations sets forth the requirements of a pilot training program. The pilot training program is also known as the pilot continuing education program, and is separate and distinct from the training program provided to trainees in the Pilot Trainee Training Program. The proposed regulations would add fatigue management and radar navigation in low visibility/restricted waters to the list of required topics included in a combination course training taken by Board-licensed pilots every five years.

Fatigue management training is mandated by HNC § 1144, and is being included in § 213 for clarity purposes so that all of the required combination course topics are found in one section of the Board's regulations. The Board has determined that radar navigation in low visibility/restricted waters training should be included in the combination course training pursuant to a recommendation for Board consideration made by the United States Coast Guard in January 2015, which recommendation stemmed from its investigation of the OVERSEAS REYMAR incident.

The proposed regulations would also delete references in § 215 to "inland pilot," including in the title of the section, since that class of pilots has ceased to exist. The proposed regulations would make other minor technical amendments to the references in this section.

§ 218. Duties of Port Agent. Existing regulations in § 218 identify a Port Agent, who is a Board-licensed pilot selected by the other pilots, and set forth duties of the Port Agent. One of the several 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.

Since trainees in the Board's Pilot Trainee Training Program are routinely training on larger and larger ships, the proposed regulations would increase the size of dry cargo vessels that require the Port Agent to assign a supervising pilot when those vessels are navigated by a pilot licensed by the Board in the previous 12 or 18 months. This change will avoid unnecessarily doubling up on licensed pilots in situations where there is no measureable increase in public safety or safety to the environment by having two licensed pilots aboard a vessel. The proposed regulations would ensure that the Port Agent pilot assignments continue to effectively meet shipping industry demands for Board-licensed pilots.

Anticipated Benefits of the Proposed Regulations

The broad objective of the proposed regulations is to ensure that the Board continues to effectively administer its statutory duty to train, license and regulate pilots that navigate large vessels in its pilotage jurisdiction. Specific benefits of the proposed regulations will allow the Board to: retain a sufficient number of appropriately qualified Commission Investigators; effectively administer the Pilot Trainee Training Program entrance examination; provide Board-licensed pilots with appropriate and relevant continuing education; and ensure the Port Agent is effectively making pilot vessel assignments while attaining the dual goal of ensuring the safety of the public and the environment and meeting shipping industry demands for Board-licensed pilots.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The Board has determined that the proposed regulations are not inconsistent or incompatible with existing regulations or statutes. After conducting a review for any regulations that would relate to or affect the regulatory sections proposed to be amended, the Board has concluded that these are the only regulations that concern Commission Investigators, the Pilot Trainee Training Program, pilot training and Port Agent duties.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: The Board anticipates that that fees for applicants participating in the Pilot Trainee Training Program examination will be \$500 for applicants taking the written examination component, and \$500 for applicants participating in the bridge simulator exercise component. Thus, for those

program applicants taking both examination components, the total application fee will be \$1,000. Other than this direct cost to training program applicants, the Board does not anticipate the proposed regulations will impose any significant adverse economic impact to private persons or businesses.

- Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Board has determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Specifically, the proposed regulations will not affect the following:

- The creation or elimination of jobs within the state.
- The creation of new businesses or the elimination of existing businesses within the state.
- The expansion of businesses currently doing business within the state.

Benefits of the Proposed Action: The proposed regulations will likely benefit California residents by ensuring that the Board effectively carries out its mission to license, train and regulate pilots by ensuring that: (1) the Board retains Commission Investigators that have appropriate skills, knowledge and abilities to effectively investigate maritime incidents and occurrences of pilot misconduct; (2) the Board attracts competent trainees to enter the Board's Pilot Trainee Training Program; (3) Board-licensed pilots are provided continuing education training covering essential training topic areas; and, (4) the Port Agent effectively makes pilot assignments.

Small Business Determination: The Board has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons, and equally effective in implementing the statutory policy or other provisions of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, if one is held, or during the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Board. Written comments will be accepted by the Board until 5:00pm, on May 9, 2016. Submit comments to:

Allen Garfinkle, Executive Director
Board of Pilot Commissioners for the Bays of San Francisco,
San Pablo, and Suisun
660 Davis Street,
San Francisco, California 94111
bopc@ca.gov

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Roma Cristia-Plant
Email: bopc@ca.gov
Phone: (415) 397-2253

The backup contact person for these inquiries is:

Name: Allen Garfinkle
Email: bopc@ca.gov
Phone: (415) 397-2253

Please direct requests for copies of the proposed text (Express Terms) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Cristia-Plant at the above address.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Board has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the above address during normal business hours (9:00 a.m. to 5:00 p.m.). Please contact Roma Cristia-Plant at the above email address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the regulations. Copies of these items are available upon request from the Board Contact Person designated in this Notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the 45-day public comment period, the Board may adopt the proposed regulations. As a result of public comments, either oral or written, that are received by the Board regarding this proposal, the Board may determine that changes to the proposed regulations are appropriate. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. The Board will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held), and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Ms. Cristia-Plant at the above email address. The Board will accept written comments on the

modified regulations for 15 days after the date on which the modified regulations are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Board is required to prepare a Final Statement of Reasons. Once the Board has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Board Contact Person identified in this Notice.

BOARD INTERNET WEBSITE

The Board maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Rulemaking, the Initial Statement of reasons, and the text of the regulations in underline and strikeout can be accessed through the Board's website at www.bopc.ca.gov.

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