

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

**FINAL STATEMENT OF REASONS**

**UPDATE OF INITIAL STATEMENT OF REASONS**

The Initial Statement of Reasons (ISOR) is hereby incorporated by reference. There is no update to the information contained in the Initial Statement of Reasons other than to clarify that the proposed changes to the ship lengths in Section 218 are estimated to collectively free up approximately 11 pilots a month.

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) has determined that the adoption of the regulations will not impose a mandate on local agencies or school districts.

**RECOMMENDATIONS REGARDING REGULATIONS AND RESPONSES**

***COMMENT LETTERS***

The 45-day public comment period ended on May 9, 2016. An additional 15-day comment period ended June 16, 2016.

No public hearing was requested.

The Board received three letters commenting on the proposed amendments to the regulations—one from the San Francisco Bar Pilots (SFBP) and two from the Pacific Merchant Shipping Association (PMSA). The comments are summarized below, together with the Board's responses.

**1. May 9, 2016, letter from the San Francisco Bar Pilots.** The SFBP letter made the following comments:

**a.** SFBP stated that it had no objection to the proposed amendments to sections 211.5, 213, and 215 of the Board's regulations.

**Response:** None.

**b.** Concerning the proposed amendments to section 218(d)(1) of the Board's

regulations, SFBP commented as follows:

SFBP concurs with the proposed amendments to Subsection 218(d)(1) relative to the size of dry cargo vessels which require a supervisory pilot when assigning a pilot licensed by the Board 18 months or less. As noted in the Initial Statement of Reasons, the size of dry cargo vessels calling on ports within the Board's jurisdiction have continued to grow since the last amendment to these regulations in 2011. Pilot trainees now routinely obtain experience piloting container vessels substantially larger than those with the length limitations adopted in 2011. For the reasons set forth in the Initial Statement of Reasons, SFBP concurs that those length limitations should be increased as set forth in the proposed amendments to keep pace with the size of vessels on which trainees receive their training.

**Response:** This response confirms that (1) the size of vessels visiting the pilotage grounds has continued to grow since 2011, (2) pilot trainees now routinely train on these larger vessels prior to licensure, and (3) given this experience during training with piloting larger vessels, the length of vessels for which a supervisory pilot is assigned should be adjusted upward to reflect this increase in pre-licensure experience navigating larger vessels.

**2. May 9, 2016, letter from the Pacific Merchant Shipping Association.** The PMSA letter made the following comments.

**a.** "PMSA is supportive of the proposed regulations contained in this rulemaking and encourages their adoption without delay." Concerning the proposed amendments to section 218 concerning vessel length limitations above which a supervisory pilot would be required, PMSA stated that, "PMSA has no objection to the proposal in chief or the intended outcome of the change."

**Response:** None, other than to note that both commenting parties supported the proposed amendments to all of the regulations.

**b.** Although it did not object to the changes in section 218 or to the intended outcome of the changes, PMSA stated that it did wish to "register the following concerns for the record." The concerns were as follows.

- PMSA commented that the Board should not have relied on the Port Agent's estimates of the number of pilots who would in the future be made available each month to perform their own piloting assignments by virtue of the reduction in the number of their supervisory assignments. PMSA stated that the Board should instead have reviewed "pilot assignment data" and made that data part of the record.

**Response:** Historical assignment data will not be precisely replicated by assignments that lie in the future. Specifically, the number of supervisory pilots who would have been freed up for other

assignments in the past had the proposed new vessel lengths then been in place is not the same number of supervisory pilots that will be freed up in the future with the new vessel lengths in place. Future visits by vessels of certain lengths will vary in number from the number of past visits by such vessels. Any predictions will therefore necessarily be estimates. Consequently, the Board is justified in relying on the Port Agent's estimate that the length changes, if implemented, "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." The Port Agent leads the SFBP, which is the private entity that provides piloting services within the Board's jurisdiction. The Port Agent "shall be responsible for the general supervision and management of all matters related to the business and official duties of pilots licensed by the board." (Harb. & Nav. Code, § 1130, subd. (b).) The Board therefore may reasonably rely on the Port Agent's estimates concerning the future impact of the proposed regulation on pilot assignments.

- PMSA commented that "the Board did not review Vessel Size data and analyze the interaction of the current rules with the actual mix of vessels calling."

**Response:** The PMSA comment concedes that the statement in the ISOR that "[d]ry cargo ships today are even larger than they were in 2011" is "obviously true." The corollary to this fact is, as stated in the ISOR, that "pilot trainees in the Board's Pilot Trainee Training Program are now routinely obtaining experience on these larger ships during the course of a one-to-three year Pilot Trainee Training Program conducted by the Board." Given these undisputed facts, the only remaining question is how much to adjust upward the vessel length that will trigger the assignment of a supervisory pilot in the 12- to 18-month period after a new pilot's licensure. Currently, a pilot licensed within the last 12 months must be accompanied by a supervisory pilot if a dry cargo vessel is over 925 feet in length. The proposal is to increase this by 50 feet to 975 feet. For pilots licensed within the last 18 months, the current regulation provides that any dry cargo vessel over 975 feet in length requires a supervisory pilot. The proposal is to increase this by 25 feet to 1,000 feet. (Vessels in excess of 1,000 feet are now common in the Bay, and some vessels now calling at the Port of Oakland exceed 1,200 feet in length.) There is no formula into which data concerning vessel length and pilot experience may be inserted that will yield a number for what vessel length should trigger the assignment of a supervisory pilot. In the past, upward adjustments have been in increments of 50 feet (2004) or 25 feet (2011). These are matters of judgment for those most closely involved in the day-to-day navigation of vessels on the Bay, and their approximations of appropriate length are entitled to great weight. The Board was entitled to rely on the representations and recommendations by the Port Agent, the SFBP's Continuing Professional Development Committee, and pilot members of the Board concerning increases in vessel length.

- PMSA commented that "The Board did not explore any other reasonable alternatives" because "no data set was requested by the Board."

**Response:** Concerning whether the Board could act without detailed vessel size and pilot assignment data, as opposed to relying on the input, estimates, and recommendations of the Port Agent, the SFBP’s Continuing Professional Development Committee, and pilot members of the Board, see above. In the ISOR, the Board determined that there are no reasonable alternatives to increasing the current vessel length thresholds for assignment of supervisory pilots. It considered the alternative of leaving in place the current vessel length thresholds. It rejected this alternative. It concluded that continuing the existing practice of double-assigning pilots on certain vessels “will result in an inefficient assignment of pilots to vessels . . . with no measurable improvement in piloting services, and potentially negatively impacting the number of licensed pilots available to meet shipping industry demands.” In the Notice of Proposed Rulemaking, the Board invited interested persons to present statements or arguments with respect to reasonable alternatives to the proposed amendments to section 218. No such statements or arguments were received.

- PMSA commented that, without data about vessel length and pilot assignments, the adjustments in vessel length were “arbitrary,” and their future effectiveness could not properly be gauged.

**Response:** For the reasons set forth above, the Board, in proposing new vessel length thresholds and seeking to make efficient use of pilots, was justified in relying on input, estimates, and recommendations from those most closely involved in the day-to-day navigation of vessels on the Bay, that is to say the Port Agent, the SFBP’s Continuing Professional Development Committee, and pilot members of the Board. Action premised on that input and those estimates and recommendations was not arbitrary. Concerning future evaluation of the effectiveness of the proposed changes, there is no impediment to measurement of the number of future instances where a supervisory pilot was freed up for other assignments by virtue of the proposed changes in vessel length.

**3. June 16, 2016, letter from the Pacific Merchant Shipping Association.** This PMSA letter made the following comments.

**a.** PMSA reiterated that “PMSA supports the adoption of the proposed regulations contained in the original notice of proposed rulemaking.” Concerning the increase in vessel lengths contained in the proposed amendments to section 218 of the Board’s regulations, the letter reaffirmed that “PMSA supports the proposed rulemaking amendment.”

**Response:** None, other than to again note that there is no opposition to adoption of any of these regulations by any interested party.

**b.** At various points in its letter dated June 16, 2016, PMSA reiterated comments set forth in its letter dated May 9, 2016.

**Response:** See above response to May 9, 2016, letter.

c. PMSA comments that if there is data which is critical to the implementation of this rulemaking, then that data must be presented to the Board and the public as part of the rulemaking package in the Initial Statement of Reasons.

**Response:** As stated above, the Board, in proposing new vessel length thresholds and seeking to make efficient use of pilots, relied upon input, estimates, and recommendations from those most closely involved in the day-to-day navigation of vessels on the Bay, that is to say the Port Agent, the SFBP's Continuing Professional Development Committee, and pilot members of the Board. As such, there was no other data critical to the implementation of this rulemaking that was not presented to the Board or available to the public.

d. PMSA's remaining comments stem from a May 12, 2016, communication on Board letterhead from Commissioner Joe Long, one of the pilot members of the Board. This communication responded to PMSA's comments regarding vessel-length adjustments that were made in its letter dated May 9, 2016. The communication from Commissioner Long was received after the May 9, 2016, 45-day initial public comment period deadline on the proposed regulations. PMSA's comments relating to this communication and the Board's responses are set forth below.

- PMSA characterized the communication from Commissioner Long as written comments that were submitted late and that "purported to be a response by the Board" to PMSA's letter dated May 9, 2016.

**Response:** The Board views Commissioner Long's written communication critiquing PMSA's comments as an effort to guide staff in the preparation of the Final Statement of Reasons. It was not intended as "public comment" for which there was a May 9, 2016, deadline, nor was it intended to serve as the Final Statement of Reasons or to represent a position of the Board itself. The Board agrees that individual commissioners are not authorized to adopt a Final Statement of Reasons. Here, PMSA viewed use of the Board letterhead as susceptible to an interpretation that Commissioner Long's views represented the views of the Board itself in response to PMSA's comments.

To obviate any possible misunderstanding or procedural flaws, the Executive Director noticed a new supplemental public comment period, which closed June 16, 2016. The Executive Director took this action in part based on PMSA's suggestion that "any defect in the record" could be cured by an extension of the public comment period. PMSA now states in its June 16 letter that any such defects are "cured by the provision of an additional comment period and opportunity for the public to request a public hearing." In conclusion, the Board notes that Commissioner Long's communication closely tracked much of the same ground as did the ISOR and the original Notice of Proposed Rulemaking. For instance, he stated that, "Because of steady growth in ship size over the years, trainees as well as all Board licensees have gained considerable experience handling ships which at one point represented a new class of service." His May 12, 2016, letter summarized the rationale for the rule change as follows:

Continuing to assign a supervisory pilot to these vessels, where these vessels have become routine and familiar to all pilots and pilot trainees, places a demand on manpower which in the Board's view outweighs any additional margin of safety that a supervisory pilot may add. Furthermore, at peak periods the additional manpower demand created by assigning supervisory plots can contribute to minimum rest period exceptions with no clear value added in terms of safety or risk mitigation, where pilot trainees had been handling the same size vessels throughout their training.

## **DETERMINATION CONCERNING ALTERNATIVES**

**1. Commissioner Investigator Minimum Standards (§ 211.5).** Adjustment of the minimum requirements to be a Commission Investigator will increase the number of candidates with whom the Board may contract for investigative services. The revised minimum investigator requirements represent the Board's best judgment as to what changes are necessary to achieve this goal. There are no reasonable alternatives.

**2. Pilot Trainees (§ 213).**

The proposed amendments had four aspects. As to each, the Board determined in the ISOR that there was no reasonable alternative to the amendment in question. As to the examination fee, the Board is required by statute to adopt such a fee and it is the Board's best judgment that the specific fee proposed will likely achieve the goals sought without being unduly burdensome to exam applicants wishing to apply to the training program in good faith. As to deleting references to admission standards for a 2014 examination for trainee applicants that is no longer in use, there is no alternative to deleting these superseded standards. As to obtaining technical expertise to review trainee admission examinations, there is no alternative to proceeding as required in the proposed amendment: turning first to psychometricians in state civil service and then, if none are available, to private-sector psychometricians with equivalent qualifications. As to the other minor technical amendments to examination methodology, there is no alternative to making these amendments, which serve to clarify what has been past Board policy.

**3. Pilot and Inland Pilot Training (§ 215).**

The Board has determined that there are no reasonable alternatives to the proposed amendments, which will (a) add two courses to the "combination course" that each pilot must take every five years and (b) delete obsolete references to "inland pilots." The Harbors and Navigation Code requires the new course on fatigue as part of pilot continuing education. The course on radar navigation in low visibility or in restricted waters is being added in response to a recommendation by the U.S. Coast Guard. References to inland pilots are obsolete because there are no longer any inland pilots.

#### **4. Duties of Port Agent (§ 218).**

In the Initial Statement of Reasons, the Board determined that there are no reasonable alternatives to increasing the current vessel length thresholds for assignment of supervisory pilots. It considered the alternative of leaving in place the current vessel length thresholds. It rejected this alternative. It concluded that continuing the existing practice of double-assigning pilots on certain vessels “will result in an inefficient assignment of pilots to vessels . . . with no measurable improvement in piloting services, and potentially negatively impacting the number of licensed pilots available to meet shipping industry demands.”

Although the Board determined in the ISOR that there are no reasonable alternatives to any of the proposed amendments referenced above, the Board, in its Notice of Proposed Rulemaking, invited interested persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period. No such statements or arguments were received. As such, the Board has determined that no reasonable alternative considered by the Board 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 regulations are proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

#### **ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES**

The proposed amendments will have no adverse economic impact on small businesses. Accordingly, there was no need to consider proposed alternatives on this ground.