

**BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF
SAN FRANCISCO, SAN PABLO, AND SUISUN**

INITIAL STATEMENT OF REASONS

Title 7. Harbors and Navigation
Division 2. State Board of Pilot Commissioners for the Bays of
San Francisco, San Pablo and Suisun
Article 5. Licensing

Harbors and Navigation Code (HNC) section 1176 requires that pilots and pilot trainees be examined by Board-appointed physicians to evaluate whether they are medically fit to perform their duties. Board regulations in Title 7 of the California Code of Regulations, sections 217 through 217.45, require (1) that pilots and pilot trainees be mentally and physically fit, (2) set forth the means of evaluating fitness, and (3) prescribe the intervals at which the fitness evaluations are to be performed.

The current fitness regulations, which became effective in 2014, substantially expanded and improved the Board's program for fitness evaluation. The Board now has over six years of experience with this new regime for evaluating fitness, and has determined that certain updates, clarifications, and changes are necessary to render the existing system more effective and efficient.

**STATEMENT OF PURPOSE, PROBLEM ADDRESSED, AND NECESSITY
RATIONALE FOR EACH PROPOSED UPDATE, CLARIFICATION, AND CHANGE**

For each proposed update, clarification, and change, the specific purpose, problem addressed, and rationale for the determination that these amendments are reasonably necessary are set forth below.

Subsection (a) of Section 202

Regarding U.S. Coast Guard form CG-719K, which Board-appointed physicians use to obtain medical information from those examined, the name and version date of that form have changed. This amendment changes the name and version date to conform to the form currently in use. The reference to the form in the Board's current regulations is obsolete and this change will correct this inaccuracy.

Subsection (l) of Section 202

This amendment sets forth an additional definition that clarifies the distinction between the *process* of evaluating fitness (fitness evaluation) and the *conclusion* concerning fitness (fitness determination). Throughout the amendments, this distinction is maintained by substituting "fitness evaluation" for "fitness determination" where appropriate.

This new subsection also clarifies that not every fitness evaluation must involve all the elements of the full medical assessment detailed in Section 217.15. Intervening circumstances between medical assessments may require a fitness evaluation that is focused on a particular condition and therefore narrower in scope.

Subsection (p) of Section 202

Until recently, one of the principal standards used by Board-appointed physicians for evaluating the fitness of pilots and trainees was Navigation and Vessel Inspection Circular NVIC-04-08, issued by the U.S. Coast Guard, dated September 15, 2008. That standard has been replaced by the Merchant Mariner Medical Manual (August 2019), issued by the Coast Guard. Subsection (p) has been amended to correct this inaccuracy by deleting the obsolete reference to NVIC-04-08 and substituting in its place the current standard. Throughout, these amendments substitute the new standard for the obsolete standard set forth in NVIC-04-08.

Section 217

Section 217 requires that Board-appointed physicians be provided with all health information necessary to evaluate fitness. The amendments make clear that the person being evaluated must not only arrange for provision of this information by other health care professionals but must also provide any health information personally possessed. This clarifying change ensures that all health information bearing on fitness will be available to Board-appointed physicians, thus enabling them to make an accurate evaluation of fitness.

Subsection (b)(2) of Section 217.5

This subsection currently sets a deadline for a trainee applicant who has accepted the offer of a position in the training program to undergo a medical assessment. The deadline has proven unworkable for applicants who are either at sea or subject to other circumstances that make meeting the deadline difficult or impossible. The amendment, in recognition of these practical difficulties, will no longer require that the assessment be completed by a certain deadline, but instead require that the accepted applicant simply arrange for commencement of the medical assessment within 20 days from acceptance.

Subsection (c) of Section 217.5

This amendment adds an exception to the current requirement that both the examining physician and the Medical Review Officer (MRO) make a determination of fitness. The Board has decided that if the examining physician determines that the evaluated person is not fit for duty (NFFD), it will not be necessary for the MRO to make an independent determination of fitness. This revision offers greater assurance that the evaluated person is indeed fit, saves the MRO the time and effort of making an independent determination, and promotes completion of fitness evaluations in a timely fashion. Language reflecting this change is included throughout the proposed amendments.

Subsections (a)(1)–(a)(4) of Section 217.10

Medical assessments of trainees are required prior to entry into the training program and annually during the training program. Medical assessments are required of pilots prior to licensure as a pilot and prior to annual renewal of a pilot license. The current regulations do not state how close in time commencement and completion of these medical assessments must take place in relation to the event that triggers the required medical assessment. This omission increases the potential that fitness determinations will not accurately reflect a pilot's or trainee's condition as of the happening of the event that triggered the required medical assessment. To ensure that fitness determinations more accurately reflect fitness as of a particular date, these amendments will require that medical assessments be both commenced and completed within 90 days of the triggering event. Because of occasional practical impediments to timely completion of their initial medical assessment by newly accepted trainees, set forth above in the discussion of Section 217.5(b)(2), the Executive Director will be authorized to increase the period within which the assessment must be commenced and completed for such persons by not more than 30 days.

A medical assessment may also be required and completed by a physician at other times close in time to an event that independently triggers the need for a medical assessment. And it sometimes happens that an individual has undergone a medical assessment pursuant to one triggering event shortly before an upcoming event that triggers another requirement that an assessment be performed. This can occur, for instance, where a trainee has completed an annual medical assessment just prior to applying for a pilot's license, an event that also requires a medical assessment.

Both of these circumstances can result in time-consuming duplication of evaluations in what is nearly the same timeframe. These amendments will provide that a new assessment will not be required if a prior assessment has been commenced and completed within 90 days prior to the event that would otherwise trigger the need for an assessment.

Subsection (b) of Section 217.10

Under various other provisions of the fitness regulations, such as those set forth in subsections (a)(5) through (a)(8) of Section 217.10, the need for a fitness evaluation may be prompted by events occurring between medical assessments. Such instances may involve medical inquiry that is narrowly focused on a particular condition. In such cases, there may be no need for the full medical assessment process that is set forth in Section 217.15. Under this amendment, at the discretion of the examining physician, subject to the MRO's review, a fitness evaluation more limited in scope than a full medical assessment may be conducted.

Subsections (a) and (d)(1) of Section 217.15

This section sets forth what is included in a medical assessment and lists an agility test as one element. As with medical assessments, as discussed above under subsections (a)(1) through

(a)(4) of Section 217.10, independently triggered agility tests can sometimes be required in close proximity to one another. Subsections (a) and (d)(1) of Section 217.15 will eliminate the need for a subsequent agility test if an agility test has been completed within 90 days of the next-required agility test.

Also under subsection (d)(1), as will be allowed under Section 217.10(a)(1), the Executive Director will be authorized to increase the period within which the agility test must be completed by an accepted trainee applicant by not more than 30 days. The reason is again the existence of occasional practical impediments to timely completion of the test by newly accepted trainees, which are set forth above in the discussion of Section 217.5(b)(2).

Subsection (b)(1)(A) of Section 217.15

This amendment would add a requirement that the required documentation submitted by the person being evaluated include all waivers of otherwise applicable medical requirements by the U.S. Coast Guard, with the exception of Coast Guard waivers previously provided to the examining physician in connection with prior fitness evaluations. This will ensure that the Board-appointed physicians have a complete picture of the person's medical condition and enable a fully informed fitness evaluation.

Subsection (b)(2) of Section 217.15

Under the current regulations, listed documents must be provided each time a person undergoes a medical assessment. The sole current exception to this requirement is the Notice, Disclosures, and Acknowledgment and Consent to Disclosure, by which the person examined is advised of the obligation to fully disclose medical conditions and to acknowledge and consent to the use that will be made of such disclosures. The Board has determined that it is critically important that the person being evaluated execute this form upon each fitness evaluation to ensure that full disclosure of medical conditions is made, thereby enabling a dependable evaluation of fitness.

Subsections (g)(1) and (h) of Section 217.15

Under the current system, a fit-for-duty (FFD) determination is effective for a period of one year unless a pilot or trainee experiences some intervening medical condition that may impair their ability to perform their duties. With certain medical conditions, a physician may wish to monitor or re-examine a pilot or trainee at an interval shorter than one year after an FFD determination. This proposed amendment will authorize a physician in such instances to issue an FFD determination for a period shorter than one year. If the examining physician and the Medical Review Officer (MRO) require reevaluation at different intervals shorter than one year, the shorter interval will be applied. Here again, the goal is to achieve the greater assurance of fitness provided by a more conservative approach to fitness evaluation.

Section 217.20

Section 217.20 requires that pilots and trainees notify their examining physician of any changes in their medical condition or medications. The amendments to this notice requirement will provide additional information to the examining physician that will eliminate the need to make follow-up inquiries of the person giving notice. The additional information includes the date of suspension or interruption of use of a prescribed medication (subsection (a)(2)), the date of diagnosis of a new medical condition (subsection (a)(3)), and copies of all correspondence from the U.S. Coast Guard concerning the person's medical condition (subsection (a)(4)).

Subsection (a) of Section 217.25

Under the current regulation, if a medical condition notification is received from a pilot or trainee under Section 217.20, the examining physician who conducted the person's most recent medical assessment evaluates the information and decides what is necessary to evaluate fitness for duty based on the new information. Alternatively, the new information may be evaluated by another examining physician appointed jointly by the Executive Director and the MRO. This amendment will leave such an appointment solely to the MRO, without any involvement by the Executive Director. The rationale is that the MRO, who supervises the examining physicians, is better informed concerning the factors bearing on such an appointment than is the Executive Director.

Subsection (e) of Section 217.30

This subsection is proposed for addition to the regulations. Under Section 218 of the Board's regulations, a pilot or trainee may be ordered to undergo drug and alcohol testing. Currently, there is nothing in the regulations that requires the results of these tests to be provided to the Board, nor is there any provision for evaluation of the test results with regard to the fitness of the pilot or trainee who was the subject of the tests. This addition will cure that omission.

Under this subsection, when the Board is notified that a pilot or trainee has undergone drug and alcohol tests, the Board shall direct a request to a Board-appointed physician for review and response concerning the test results. The form shall provide for a response by the examining physician that indicates whether the test results were positive for any of the drugs referenced in Section 217.15(e) or indicated a blood-alcohol concentration of 0.04 percent or more. If so, the physician shall complete the form by requesting the Executive Director to refer the pilot or trainee to the Medical Review Officer under subsection (a).

Section 217.37

This section is proposed for addition to the regulations. When a pilot is determined NFFD, the pilot is placed on medical disability leave and is not available for piloting assignments. This means that fewer pilots are available to handle vessel transits. Particularly if the medical leave or leaves persist for long periods, the cumulative effect on still-active pilots can have deleterious effects, including fatigue and the consequent increased potential for injury, property damage, and

harm to the environment. This new section requires an examining physician to commence reevaluation of NFFD pilots at intervals of not less than 120 days following the most recent NFFD determination to evaluate whether they are still not fit to perform their duties. This process will assist in increasing the number of pilots that are available for assignment.

Subsection (c)(2) of Section 217.40

Section 217.40 describes the process for appeals to the Board from NFFD determinations. The appeal process includes submission of a fitness evaluation by a physician of the appellant's choice. Subsection (c)(2) currently requires that the MRO conduct another fitness evaluation of the appellant. This amendment will relieve the MRO of that responsibility except in situations where the examining physician earlier determined that the appellant was FFD and it was the MRO who determined the appellant NFFD. The rationale is twofold: (1) that the Board-appointed physician who earlier determined the appellant NFFD should do the new evaluation because that will offer greater assurance concerning whether the appellant is fit for duty, and (2) that the MRO should not shoulder this additional evaluation burden unless it was the MRO who determined the appellant NFFD.

Subsection (b)(2) of Section 217.45

The current regulations require that the MRO have 10 years of experience in occupational medicine and that examining physicians have five years of occupational medicine experience. This five-year requirement for examining physicians has led to delays in fitness evaluations because of the limited number of physicians at U.C. San Francisco having the required experience. Such delays can have negative effects. For instance, delays affect the number of pilots available for assignment because a pilot license may not be renewed unless the pilot receives an FFD determination following a medical assessment. Reducing the experience requirement to one year for examining physicians will enhance timely completion of fitness evaluations, thus keeping both the number of pilots and trainees available for duty at optimal levels. Because the MRO reviews all fitness determinations, the Board has concluded that this alteration of the experience requirement for examining physicians will not compromise the effectiveness of the evaluation program.

ECONOMIC IMPACT ASSESSMENT

The Board has concluded that the proposed amendments to the fitness regulations will not facilitate the creation or elimination of jobs within California nor will they affect the creation or elimination of businesses within California or the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed amendments to the fitness regulations will benefit California residents and the state's environment by enacting stricter standards for issuance of fit-for-duty determinations to pilots and pilot trainees, by maximizing the number of pilots available for assignment, and by rendering the fitness evaluation process quicker and more efficient.

STUDIES, REPORTS, OR SIMILAR DOCUMENTS RELIED UPON

In proposing these amendments to the fitness regulations for pilots and pilot trainees, the Board did not rely on any technical, theoretical, or empirical study, report, or similar document. In the over six years that the fitness regulations have been in effect, Board staff has had day-to-day experience with implementation of the regulations, and it has kept the Fitness Committee of the Board and the Board apprised of how the fitness program is functioning. At each of its meetings over this six-year period, the Fitness Committee has discussed the effectiveness and efficiency of the fitness program. The content of those meetings is recorded in the minutes of the Committee's meetings, which are available on the Board's website, www.bopc.ca.gov. These proposed amendments grew out of a consensus reached by Board staff and the Committee that certain changes were needed to render the fitness program more effective and efficient.

DESCRIPTION OF REASONABLE ALTERNATIVES

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

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC EFFECT ON BUSINESS

The proposed amendments will not affect businesses but will affect only individual pilots licensed by the Board and pilot trainees and applicants to become pilot trainees. All of these individuals are currently subject to the requirements of the Board regulations governing evaluation of mental and physical fitness.