

[On Board of Pilot Commissioners letterhead]

NOTICE OF PROPOSED RULEMAKING

[date]

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.

The Board proposes to amend the following sections of the California Code of Regulations, Title 7, Harbors and Navigation, Division 2, State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun:

- § 202. Other Definitions.
- § 217. Purpose of Fitness Regulations.
- § 217.5. Duty to Submit to Medical Assessment; Overall Standards.
- § 217.10. Events Requiring Medical Assessment.
- § 217.15. Description of Medical Assessment; Detailed Standards.
- § 217.20. Duty to Report Medical Information.
- § 217.25. Fitness Determination by Board-Appointed Physicians Following Receipt of Medical Information.
- § 217.30. Board-Initiated Fitness Determination.
- § 217.35. Consequences of Not Fit for Duty Determination.
- § 217.40. Proceedings Following Fitness Determinations.
- § 217.45. Qualification Standards for Board-Appointed Physicians; Duties of Physicians.

The Board proposes to add a new section to its regulations:

- § 217.37. Reevaluation of Pilots on Medical Disability Leave.

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 [date], 2020**. 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

Authority: Harbors and Navigation Code (HNC) §§ 1154 and 1171.5 authorize the Board to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific HNC §§ 1101, 1141, 1157, 1157.1, 1157.2, 1157.3, 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182, and 1183.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law and Effect of Proposed Amendments

HNC section 1176 requires that pilots and pilot trainees be examined by Board-appointed physicians to evaluate their fitness to perform their duties. Board regulations set forth in Title 7 of the California Code of Regulations, sections 217 through 217.45, require that (1) 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.

In summary, the updates, clarifications, and changes are as follows:

- One of the Board's principal standards for fitness evaluation is the same as that used by the U.S. Coast Guard, which also licenses pilots and certifies their fitness. The Board also uses a Coast Guard form to obtain information from pilots and trainees concerning their medical condition. The Coast Guard's fitness standards have recently changed, as has the medical information form that a pilot or trainee submits to initiate the fitness evaluation. These amendments will update the regulations to specify the current fitness evaluation standards and the current reporting form used by the Coast Guard.
- Under the current system, a fit-for-duty (FFD) determination is effective for a period of one year unless the 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 re-examine a pilot or trainee at an interval shorter than one year after an FFD determination. A proposed amendment would allow a physician 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 would be applied.

- Medical assessments and agility tests of trainees are required prior to entry into the training program and annually during the training program. Medical assessments and agility tests are required of pilots prior to licensure as a pilot and prior to annual renewal of a pilot license. To ensure that assessments and tests are conducted close in time to the event requiring the assessment or test, the amendments would specify that a required assessment or test must be commenced and completed within 90 days prior to the triggering event.
- Both the medical assessment and the agility test may also be required by a physician at other times. It sometimes happens that an individual has undergone a medical assessment or agility test shortly before an upcoming event that triggers a requirement that an assessment or agility test be performed. These amendments would provide that a new assessment or a new test will not be required if a prior assessment or test has been commenced and completed within 90 days prior to the event that would otherwise trigger the need for an assessment or test.
- The amendments clarify that, at the discretion of Board-appointed physicians, the full medical assessment process need not be completed in every case in which a Board-appointed physician determines that a fitness evaluation of a trainee or pilot is required.
- Certain deadlines in the current regulations have proven overly short. Amendments would allow the Board's Executive Director to extend those deadlines for prescribed periods for good cause shown.
- The current regulations require two fitness determinations, one by the examining physician and one by the MRO. An amendment would eliminate the need for a fitness determination by the MRO if the examining physician has determined that the trainee or pilot is not fit for duty (NFFD).
- This subsection is proposed for addition to the regulations. Pilots and trainees may be required to undergo drug and alcohol tests. Currently, there is nothing in the Board's regulations requiring the test results to be reported 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.
- A pilot who is determined NFFD is placed on medical disability leave and may not return to piloting until determined to be FFD. A new proposed regulation would require that pilots on medical disability leave have their fitness reevaluated at intervals of not less than 120 days. This will ensure that the number of pilots available for piloting duties is maximized, so as to reduce potential for fatigue among pilots available for assignment.
- The current regulations require that examining physicians have at least five years of experience in occupational medicine. Because the evaluations of these physicians are subject to review by the Medical Review Officer, who must have at least 10 years of experience in occupational medicine, this standard is overly strict and results in delays, given the limited number of examining physicians with the required experience. The amendment would require that examining physicians have at least one year of experience in occupational medicine.
- Throughout, the proposed amendments would distinguish the *process* for evaluating fitness ("fitness evaluation") from the *conclusion* concerning fitness ("fitness determination").
- Where necessitated by the proposed amendments, the Board's various forms will be amended to conform to the new language of the regulations.

Anticipated Benefits of the Proposed Regulations

The broad objective of the proposed amendments to the fitness regulations is to ensure that the Board administers its program for determining the mental and physical fitness of pilots and pilot trainees in a more effective and efficient manner. The amendments will enhance protection of public health and safety and protection of the environment by enacting stricter standards for issuance of fit-for-duty determinations, by maximizing the number of pilots available for assignment, and by rendering the fitness evaluation process quicker and more efficient.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations or statutes. After conducting a review for any state regulations that would relate to or affect the regulatory sections proposed to be amended, the Board has concluded that these are the only state regulations that concern the fitness for duty of pilots and pilot trainees under the jurisdiction of the Board.

DISCLOSURES AND DECLARATIONS REGARDING THE PROPOSED ACTION

The Board has made the following 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: None.
- Cost or savings in federal funding to the state: None.
- The amendments 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.
- The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of the Economic Impact Analysis/Assessment

The Board has concluded that the proposed regulations will not facilitate the creation or elimination of jobs within California. The proposed regulations will not 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.

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 [date]. 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.