

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

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

NOTICE OF ADDENDUM TO THE INITIAL STATEMENT OR REASONS AND ADDITION OF DOCUMENTS
AND INFORMATION TO RULEMAKING FILE

Pursuant to the requirements of Government Code sections 11346.8(d), , and 11347.1, the Board of Pilot Commissioners for The Bays Of San Francisco, San Pablo, And Suisun is providing notice that documents and other information which the agency has relied upon in adopting the proposed regulations have been added to the rulemaking file and are available for public, inspection and comment.

These documents are available for public inspection on the Board's website at bopc.ca.gov or at the Board's office located 660 Davis Street, San Francisco, California 94111 from July 1, 2021 through July 16, 2021 between the hours of 8:00 a.m. and 5:00 p.m. If you have any comments regarding the documents and other information, written comments must be submitted to the Board by 5:00 p.m. on July 16, 2021, to the Board's email at bopc@bopc.ca.gov or via mail:

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

All written comments received by July 16, 2021, which pertain to the below listed documents and other information will be reviewed and responded to by the Board's staff as part of the compilation of the rulemaking file.

The documents and information added to the rulemaking file are as follows:

ADDENDUM TO NOTICE OF PROPOSED RULEMAKING

DOCUMENTS INCORPORATED BY REFERENCE – NEW, REPEALED, AMENDED

- US Coast Guard: Merchant Mariner Credential Medical Evaluation Report (01/09) - Repealed
- US Coast Guard Form CG-719K Application for Medical Certificate (04/17) - New

- US Coast Guard Form CIM 16721.48 Merchant Mariner Medical Manual (08/19) - New
- US Coast Guard: NVIC 04-08 Navigation and Vessel Inspection Circular, Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials, dated September 15, 2008 - Repealed
- BOPC Form: Disclosure of Information form (Version March 28, 2013) - Amended September 24, 2020
- BOPC Form: Notice, Disclosures, and Acknowledgment and Consent to Disclosure form (Version March 28, 2013), Amended September 24, 2020
- BOPC Form: Statement of Fitness for Duty form (Version March 28, 2013), Amended September 24, 2020
- BOPC Form: Fitness for Duty Notification form (Version March 28, 2013), Amended September 24, 2020
- BOPC Form: Notice to Board-Appointed Physician form (Version March 28, 2013), Amended September 24, 2020
- BOPC Form: Notice to Executive Director form (Version March 28, 2013) Amended September 24, 2020
- BOPC Form: Statement of Fitness for Duty form (Version March 28, 2013) Amended September 24, 2020
- BOPC Form: Notice of Post-Incident Drug Test (Version September 24, 2020), New

ADDENDUM TO ECONOMIC IMPACT STATEMENT

- These amendments do not substantively change the Board's understanding of the associated laws. The proposed regulation changes are intended to improve the clarity of existing regulatory provisions. These clarifications are not expected to result in increased costs or savings to any state or local agency, school district; will not impact other nondiscretionary costs or savings imposed on local agencies; or effect costs or savings in federal funding to the state.
- The amendments will benefit worker safety by enacting stricter standards for issuance of fit-for-duty determinations, and improving the efficacy of the fitness evaluation process.
- The regulated public - pilots and medical providers - are not considered small businesses as defined in Government Code Section 11342.610. The current regulations do not impact small business, and the amendments are not expected to have an effect on small businesses.

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

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 (b)(3) of Section 217.15
 - This subsection was amended to clarify that the medical review Officer maintains the responsibility for reviewing the results of a medical assessment, unless there is an exception as provided as in subsection 217.15(f)(2). This amendment is necessary to ensure consistency with the new exception, which removes the requirement that both the MRO and examining physician must review all documents and determinations made during the fitness evaluation, particularly if the patient is found unfit for duty.
- Subsection (c)(3) of Section 217.15
 - This subsection was amended to clarify that the medical review Officer maintains the responsibility for reviewing the results of a physical examination, unless there is an exception as provided as in subsection 217.15(f)(2). This amendment is necessary to ensure consistency with the new exception, which removes the requirement that both the MRO and examining physician must review all documents and determinations made during the fitness evaluation, particularly if the patient is found unfit for duty.
- Subsection (d)(3) of Section 217.15
 - This subsection was amended to clarify that the medical review Officer maintains the responsibility for reviewing the results of an agility test, unless there is an exception as provided in subsection 217.15(f)(2). This amendment is necessary to ensure consistency with the new exception, which removes the requirement that both the MRO and examining physician must review all documents and determinations made during the fitness evaluation, particularly if the patient is found unfit for duty.
- Subsection (e)(3) of Section 217.15
 - This subsection was amended to clarify that the medical review Officer maintains the responsibility for reviewing the results of a toxicological test, unless there is an exception as provided as in subsection 217.15(f)(2). This amendment is necessary to ensure consistency with the new exception, which removes the requirement that both the MRO and examining physician must review all documents and determinations made during the fitness evaluation, particularly if the patient is found unfit for duty.
- Subsection (c) of Section 217.20
 - This subsection was amended to clarify that those who are subject to fitness evaluations must provide notice of health or health-related changes (i.e. medication changes, etc.) to

both the Board physician and Executive Director at the same time. Notice is currently required under existing regulations; however, there is not a mechanism in current regulations to require timely notice. This amendment is necessary to ensure that the pilots are accountable for providing appropriate notice and to eliminate the need to make follow-up inquiries to the person giving notice.

- Subsection (d)(1) of Section 217.45
 - This subsection was amended to alter the timeframes that a Board-appointed physician must take a piloting trip. Currently, Board-appointed physicians are required to take these trips, however, current regulations appear to limit those trips to within two months of a new contract for medical services. As the contract term is five years and the contract is with the a medical group and not with individual physicians, a newly appointed physician may not receive the practical experience provided by these trips for years. This amendment is necessary to ensure that newly appointed physicians take a piloting trip in a timely manner, especially as the trips are required to maintain their position with the Board.
- Subsection (f) of Section 217.45
 - This subsection was amended allow the Board's Executive Director to appoint an acting Medical Review Officer (MRO) only when the current MRO is unavailable to appoint their replacement. The MRO is a key position within the fitness evaluation process. The lack of an MRO will delay the evaluation, leading to fewer licensed pilots and decreasing public and environmental safety. Notice of the length of time that an acting MRO will be in place is not necessary; if the MRO does not return, the Executive Director will be able to reappoint the acting MRO. Providing the Executive Director with the ability to appoint an acting MRO will ensure continuity of care and services.

DESCRIPTION OF CHANGES TO FITNESS FORMS

Below is a brief description of the proposed amendments to fitness forms and a description of one new form included in the proposed regulations. All changes were necessary to conform with current and proposed regulations.

Fitness for Duty Notification Form

The following changes are necessary to conform with the requirements as described in 7 CCR sections 217.15(i) and 217.35.

- Added Mailing Address and Email Address. This information is necessary to ensure Board staff can send notice of the fitness determination per current regulations.
- Clarified that the fitness for duty has been determined by the examining physician and/or the Medical Review officer.
- Amended the two options for fitness for duty status from fit or not fit by adding a fit until a date specified option, added a medical disability leave termination date, added a not fit for duty

effective date, and if the latter, added a check box for the Executive Director to place the pilot or trainee on medical disability leave as of a date certain. These changes are necessary to conform with new section 217.35.

Notice, Disclosures, and Acknowledgement and Consent to Disclosure Form

The following changes are necessary to conform with the requirements as described in 7 CCR subsection 217.15(b)(1)(D).

- First paragraph on page 2, updated the title of the merchant mariner medical report to Application for Medical Certificate, Form CG-719K (04/17). This change is required since the federal government amended and renamed the form CG-719k in 2017. Per HNC 1171.5(a) the Board may use or exceed the federal standards for licensing pilots. The Board opts to accept federal standards for medical evaluation, which is part of the licensing process.

Notice to Board-Appointed Physician Form

The following changes are necessary to conform with the requirements as described in 7 CCR subsection 217.20(b).

- First paragraph combined the first two sentences, and added a parenthetical note indicating that if the most recent examining physician is not available, the requestor is to send the form to the Medical Review Officer.
- Updated the check boxes explaining the requestor's reason for the review to include dates.
- Updated the check box alerting the physicians of a diagnosis date if the suspension or interruption was in consultation with a physician.

Statement of Fitness for Duty Form

The following changes are necessary to conform with the requirements as described in 7 CCR subsection 217.15(f).

- Added a space for a date to be filled in for the BOPC License Renewal Date or the Trainee Anniversary Date.
- Added check boxes to clarify the type of Fitness Evaluation performed—a medical assessment, including agility test, a medical assessment with no agility test, or other evaluation.
- Under the Examining Physician section, added a Fit for Duty until a specified date option.
- Under the Medical Review Officer section, deleted the Fit for Duty and Not Fit Duty check boxes.
- Added to the Medical Review Officer determination section under the "I do not concur with the Fit for Duty determination made by the examining physician," inserted options for the Medical Review Officer to make a Fit for Duty until a specified date determination, or a Not Fit for Duty determination.

DOCUMENTS

Per HNC 1171.5(a) the Board may use or exceed the federal standards for licensing pilots. When the Board initially adopted these regulations, it opted to accept federal standards for medical evaluation, which is part of the licensing process. The following federal documents were incorporated by reference in current regulations. Due to changes or amendment by the government, it is necessary to repeal, amend or adopt these documents.

- CG-719k Merchant Mariner Credential Medical Evaluation Report (01/09) - this form is being repealed as the version referenced in current regulations no longer exists. The federal government amended and renamed the form CG-719k in 2017. The Board opts to accept federal standards for medical evaluation, which is part of the licensing process, by repealing the CG-719k currently referenced and incorporating the revised CG-719K
- CG-719k Application for Medical Certificate, Form CG-719K Rev. (04/17) - this form is being adopted as the CG-719k referenced in current regulations no longer exists. The federal government amended and renamed the form CG-719k in 2017. The Board opts to accept federal standards for medical evaluation, which is part of the licensing process, by adopting the current version of the CG-719k and incorporating the form by reference.
- NVIC 04-08 Navigation and Vessel Inspection Circular, Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials, issued by the U.S. Coast Guard, dated September 15, 2008 is repealed. The NVIC 04-08 is being repealed as does not contain the full Merchant Mariner Medical Manual. The original document was the government's notice of changes made to the manual, not the full manual. The Board opts to accept federal standards for medical evaluation, which is part of the licensing process, by repealing references to NVIC 04-08 and incorporating the full manual by reference.
- CIM 16721.48 Merchant Mariner Medical Manual (08/19), issued by the U.S. Coast Guard is adopted and incorporated by reference.