

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

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### NOTICE OF PROPOSED RULEMAKING November 7, 2023

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.
- § 210. Incident Review Process.
- § 214. Pilot Trainee Training Program.
- § 215. Pilot Training.
- § 220. Duties of Pilot Trainees.

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

- § 218.1. Fatigue Risk Management.

### PUBLIC HEARING

The Board has held one public hearing on this proposed action. However, the Board will hold a second public 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 after 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@bopc.ca.gov](mailto:bopc@bopc.ca.gov). The written comment period closes at **5:00 p.m. on November 23, 2023**. 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) §§ 1144, 1154, and 1196.5 authorize the Board to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific HNC §§ 1144 and 1196.5.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **Existing Law and Effect of Proposed Amendments**

HNC §1196.5 requires the Board to evaluate factors that contribute to pilot fatigue and to adopt regulations that will prevent pilot fatigue and thereby ensure the safe operation of vessels. As required by §1196.5, the Board contracted for an independent study of the effect of work and rest periods on the ability of pilots to safely perform their duties. The study was performed by the San Jose State University Research Foundation in collaboration with the Ames Fatigue Countermeasures Laboratory of the National Aeronautics and Space Administration. The study made recommendations to the Board on how to prevent pilot fatigue and ensure the safe operation of vessels. These regulations are the Board's response to those recommendations.

The principal feature of the regulations is the requirement that the Port Agent prepare, and submit for Board approval, a fatigue risk management system (FRMS) with prescribed elements. The Port Agent is a member of the San Francisco Bar Pilots Association (San Francisco Bar Pilots), a private business staffed by pilots licensed by the Board. Its pilots provide piloting services to vessels transiting the Golden Gate and adjacent bays and tributaries. The Port Agent is a pilot appointed by the pilots, subject to Board confirmation, to carry out the orders of the Board. Proposed §218.1 of the regulations sets forth the required elements of the FRMS.

Some of these elements are mandatory, imposing specific requirements:

- Maximum work periods for both day and night-time work
- Maximum night-time hours worked during any 72-hour period
- A limit on the number of consecutive days on-call
- Minimum rest periods between work periods
- Reports to the Board concerning these requirements

Other required elements direct the Port Agent to submit for Board approval proposals that deal with various subjects identified by the Board, including:

- A plan for recalling off-call pilots that minimizes disruption of their recovery rest periods
- Minimum advance notice by those ordering pilot services, to increase predictability of schedules for pilots awaiting assignment
- A plan to increase the number of pilots available at any given time
- A plan to educate pilots on the importance of reporting fatigue and removing themselves from the roster when they are significantly fatigued
- Measures to mitigate fatigue caused by long-distance travel to and from mandated training

Other proposed amendments include:

- A requirement that investigation reports concerning navigational incidents include a determination whether fatigue contributed to the incident
- Educational requirements for both pilots and pilot trainees concerning the hazards of fatigue and how to avoid it

The Port Agent must submit the FRMS for review and reapproval by the Board one year after the initial approval, every 24 months thereafter, and whenever the Port Agent makes substantive changes to the FRMS.

### **Anticipated Benefits of the Proposed Regulations**

The objective of the proposed regulations is to prevent pilot fatigue and thereby further the safe operation of vessels on waters within the Board's jurisdiction. The result will be to reduce the potential for personal injury, property damage, and harm to the environment.

### **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 sections proposed to be added and amended, the Board has concluded that these are the only state regulations that concern prevention of fatigue among 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.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Housing costs: None.

- Effect on small business: None. The regulations will have an effect on the San Francisco Bar Pilots Association, which is not a small business. It is engaged in providing services in transportation. Its annual gross receipts exceed two million dollars (\$2,000,000). It is therefore excluded from the definition of "small business" contained in Government Code section 11342.610, subdivisions (c)(6) and (c)(7).

### **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 regulations will benefit the health and welfare of California residents, the state's environment, and worker safety by preventing pilot fatigue from affecting the safe operation of vessels, including oil tankers, on the waters within the Board's jurisdiction, thereby protecting persons, property, and the environment from damage.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code §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 5:00 p.m. on November 23, 2023. 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@bopc.ca.gov](mailto:bopc@bopc.ca.gov)

## CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Alethea Wong  
Email: [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov)  
Phone: (415) 397-2253

The backup contact person for these inquiries is:

Name: Allen Garfinkle  
Email: [bopc@bopc.ca.gov](mailto:bopc@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. Alethea Wong 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 Alethea Wong 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 15-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. Wong 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](http://www.bopc.ca.gov).