

Regulatory Analysis Form		This space for use by IRRC	
(1) Agency Department of State Navigation Commission for the Delaware River and its Navigable Tributaries		RECEIVED 2002 MAY -1 PM 1:10 REGULATORY REVIEW COMMISSION	
(2) I.D. Number (Governor's Office Use) 16A-662		IRRC Number: 2126	
(3) Short Title Navigation Licensure and Renewal			
(4) PA Code Cite 4 Pa.Code, Chapters 401, 402, 403 and 405.		(5) Agency Contacts & Telephone Numbers Primary Contact: L. Lawrence Boyle, Deputy Chief Counsel and Counsel to the Navigation Commission (717) 783-1657 Secondary Contact: Joyce McKeever, Deputy Chief Counsel (717) 783-7200	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulations constitute a general revision of four of the six chapters of the Commission's regulations: Chapter 401 (relating to general provisions), Chapter 402 (relating to administration), Chapter 403 (relating to construction permits), and Chapter 405 (relating to pilots and pilotage).			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The Commission has authority to promulgate the final regulations under Section 4 of the Act of March 29, 1803, P.L. 542, as amended, 55 P.S. § 31, and Section 2504-B(4) of The Administrative Code, Act of April 9, 1929, P.L. 177, added by Section 4 of the Act of July 4, 1976, P.L. 980 No. 197, 71 P.S. § 670.2(4).			

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulations are not mandated by federal or state laws or regulations.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The primary public interest served by the regulations is the enhancement of navigational safety on the Delaware River through the codification of such requirements for state-licensed pilots as random drug testing, continuing education and specialized training, and mandatory pilotage trips to maintain current knowledge of river conditions.

The secondary public interest served by the regulations is the elimination of many obsolete and unnecessary regulations from the PA Code.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

A marine accident might occur that could have been prevented if the Commission had imposed the pilot training and safety requirements in the regulations. Given the ever-increasing size of the commercial vessels on the Delaware River, a marine accident is now more likely than ever to have adverse consequences for the public health and safety and the environment.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Because of the importance of marine commerce to the regional, state and local economies, the public in general and the shipping industry in particular would be the beneficiaries of the pilot training and safety requirements in the regulations. There is no way to quantify these benefits.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No group will be adversely affected by the regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulations affect state-licensed pilots, state-appointed apprentice pilots, and applicants for appointment as apprentice pilots. Pennsylvania law fixes the maximum number of pilots combined in the top four license classes at 52; currently there are 30 active pilots in Pennsylvania. In May 1998, the Commission appointed nine apprentice pilots in Pennsylvania. From July through October 1998, nine apprentice pilots appointed by the Commission began their apprenticeship program.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In drafting the regulations, the Commission had extensive consultations with, and input from The Pilots' Association for the Bay and River Delaware, a business association representing the interests of all state-licensed pilots in Pennsylvania and Delaware. In addition, the Commission consulted with the American Pilots' Association, the United States Coast Guard and the National Transportation Safety Board.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The costs of compliance for the regulated community cannot be estimated. However, the costs are likely to be minimal because most pilots are already in compliance with the training and safety requirements in the regulations. The potential savings to the regulated community would be in the form of avoided marine accidents.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulations would not result in new costs or new savings to local government.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

These regulations will have no measurable fiscal impact on the Commonwealth, its political subdivisions, or the private sector because the Navigation Commission is supported by fees paid for by licenses. As noted in the preamble to the regulations, many changes will harmonize with current federal regulations and recommendations as well as with stricter regulations now present in Delaware. Although these changes will not have a substantial fiscal impact because many changes have already been implemented by Pennsylvania pilots, there may be a minimal fiscal impact, which cannot be calculated at this time.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY +1	FY +2	FY +3	FY +4	FY +5
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Unestimated	Unest.	Unest.	Unest.	Unest.	Unest.
Local Government	0	0	0	0	0	0
State Government	Unestimated	Unest.	Unest.	Unest.	Unest.	Unest.
Total Savings	Unestimated	Unest.	Unest.	Unest.	Unest.	Unest.
COSTS:						
Regulated Community	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

See paragraph 19.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

See paragraph 19.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered because it is necessary to update the regulations, as stated above.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Alternative regulatory schemes were not considered because it is necessary to update the regulations, as stated above.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The regulations adopt the federal government's standards for random drug testing and mirror federal standards in such areas as radar training. However, Pennsylvania's pilot license laws, like those of other states, impose more stringent license standards than federal pilot license laws. The final regulations maintain Pennsylvania's high standards. The Commission is unaware of any interested constituency that does not support the highest safety and training standards for state-licensed pilots, especially when such high standards can be realized at minimal cost.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulations would not put Pennsylvania at a competitive disadvantage with other states. Pennsylvania's proposed pilot training and safety requirements are very similar to those of Delaware, which also licenses pilots for the Delaware River. The two states' complementary regulatory schemes have helped maintain the viability of marine commerce on the Delaware River. In the other states that border Pennsylvania, West Virginia has not enacted any comparable legislation, while Maryland, New York and New Jersey have similar statutes and regulations in place. Therefore, these final regulations will not place Pennsylvania at a competitive disadvantage in relation to these other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Except as stated in the preambles of the proposed and final regulations, these regulations will not affect the Navigation Commission's existing regulations. The regulations will not affect other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Navigation Commission discussed the proposed regulations at a number of its public meetings and through informal discussions with different licensees. No other public hearing or informational meetings are scheduled.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The application forms and renewal notices will be revised to include the requirements of the regulations at Sections 405.7, 405.12 and 405.21.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions have been developed to meet the particular needs of affected groups or persons.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

All provisions of the regulation will become effective thirty days after final rulemaking is published in the Pennsylvania Bulletin, except subsections 405.7(b)(1) and 405.12(b) relating to continuing education, which take effect 2 years after publication.

(31) Provide the schedule for continual review of the regulation.

The Navigation Commission meets semiannually and will continue to review and monitor the effectiveness of its regulations.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

2136

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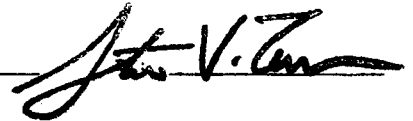
Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

Navigation Commission for the Delaware River and its Navigable Tributaries

(AGENCY)



BY: _____
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 16A-662

DATE OF ADOPTION: _____

4/10/02
DATE OF APPROVAL

DATE OF APPROVAL

BY: C. Michael Weaver
C. Michael Weaver

(Deputy General Counsel
(Chief Counsel,
Independent Agency
(Strike inapplicable
title)

TITLE: Acting Secretary of the Commonwealth
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable. No Attorney General approval or objection within 30 days after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
NAVIGATION COMMISSION FOR THE
DELAWARE RIVER AND ITS NAVIGABLE TRIBUTARIES
4 Pa. Code, Chapters 401, 402, 403 and 405
Navigation Licensure and Renewal

PREAMBLE

The Navigation Commission for the Delaware River and its Navigable Tributaries (“Commission”) amends 4 Pa.Code, Chapters 401 (relating to general provisions), 402 (relating to administration), 403 (relating to construction permits) and 405 (relating to pilots and pilotage). These amendments revise and update four of the six chapters of the Commission’s regulations in the first revision of the regulations since 1977.

I. *Statutory Authority*

The Commission has authority to promulgate regulations under section 4 of the act of March 29, 1803 (P.L. 542, 4 Sml 67) (55 P.S. § 31); and section 2504-B(4) of the Administrative Code of 1929 (71 P.S. § 670.2(4)).

II. *Responses to Comments*

The notice of proposed rulemaking was published at 30 Pa.B. 3179 (June 24, 2000) and was subject to a 30-day public comment period. The Commission received no public comments. The House Professional Licensure Committee (HPLC) filed its comments on August 11, 2000. The Independent Regulatory Review Commission (IRRC) filed its comments on August 24, 2000. Because the preamble for the proposed rulemaking was previously printed in the *Pennsylvania Bulletin* and described the amendments in detail, this preamble will only address the amendments that the Commission made as a result of the comments that HPLC and IRRC provided, and changes to the statute made on these same subjects in May and June of 2001.

The comments made by HPLC related to the validity and/or reliability of proposed procedural changes, as well as consistency with statutory provisions. The comments made by HPLC are addressed in the particular amendments to the regulations, as referenced below.

The comments made by IRRC related to clarity, reasonableness, implementation procedure, consistency and statutory authority. These comments are noted in specific amendments to the regulations, as referenced below.

III. *Purpose*

These amendments enhance the navigational safety on the Delaware River through the implementation of requirements for state-licensed pilots, such as random drug testing, continuing education, special training in bridge resource management and automatic radar plotting aids, as well as mandatory pilotage trips to maintain current knowledge of river conditions (“recency-of-route”). The amendments eliminate regulations which are obsolete because of statutory changes affecting the Commission

and state-licensed pilots or which are unnecessary because their subject matter is adequately covered by statute.

The amendments on final rulemaking also give those regulations retained by the Commission better organization and clarity. A description of the revisions and changes appears below.

IV. *Responses to Statutory Changes*

The amendments also articulate those changes made by the General Assembly and signed into law in 2001. The act of June 22, 2001 (P.L. 582, No. 41) ("Act 41") restates the membership of the Commission, as previously designated at 71 P.S. § 180.5(a), and removes the requirement that the principal office of the Commission shall be in Philadelphia. This change is discussed further at section 401.2 of this preamble. Act 41 also provides for the Commission's meetings to be held in the city of Philadelphia or at a location determined by a majority vote of the Commission. Additionally, Act 41 requires public notice of the time and place of the Commission's meetings to comport with 65 Pa.C.S. Chapter 7. These changes are discussed at section 402.11.

The act of May 17, 2001 (P.L. 98, No. 11) ("Act 11") changes the reporting requirement to a record-keeping requirement for those pilots who train an apprentice. This change is discussed further at section 405.9(b) of this preamble.

V. *Description of Revisions*

Chapter 401: General Provisions

§ 401.2 (Commission offices)

Final section 401.2 includes the full address for the Commission's office including state and zip code in accordance with IRRC's suggestion. At the suggestion of IRRC, the Commission also designated this office as the location where potential applicants can obtain all necessary forms. When Act 11 of 2001 removed the requirement that the principal office of the Commission shall be in Philadelphia, the Commission designated the Department of State in Harrisburg as its office.

Chapter 402: Administration

§ 402.11 (Meetings)

A new subsection (c) provides for the Commission's meetings to be held in the city of Philadelphia or at a location determined by a majority vote of the Commission, as authorized by Act 41 of 2001.

Chapter 405: Pilots and Pilotage

§ 405.3 (Application for licensure or apprenticeship)

At the suggestion of IRRC, the Commission inserted the address and phone number of the Department of State (the Commission's administrative office), and clearly designated this as the location where potential applicants can obtain all necessary forms.

§ 405.4 (Examination for sixth-class license)

The Commission articulated, with specificity, the precise format and requirements for passage of the entry-level oral or written examination, as suggested by both HPLC and IRRC. The initial examination, administered by three first-class pilots designated by the Commission, consists of four parts: (i) Rules of the Road; (ii) Chart Work; (iii) Shiphandling and Anchoring; and (iv) Local Knowledge. A passing grade is set as obtaining 90% of the questions correct on parts (i) and (ii) and 80% correct on parts (iii) and (iv). The written examinations will consist of at least 50 questions on each part, except for Chart Work. On the Chart Work portion of the examination, an apprentice is given a blank chart to place labels appropriately for such landmarks as channel depths, shoals, rocks, obstructions, buoys, range lights, overhead bridge clearances, specific geographic features and anchorages.

Regarding the validation of the examination, most of the questions on Rules of the Road come from the United States Coast Guard. The source for the information on Chart Work comes from chart publications of the United States Coast Guard and the National Oceanographic and Atmospheric Administration (NOAA). The questions on Shiphandling and Anchoring come from the pilots and relevant textbooks. Local Knowledge questions come from the quarterly subjects that the apprentices study, including instructions from the licensed pilots, as well as local regulations and guidelines, along with publications of the United States Coast Guard, NOAA, the United States Army Corps of Engineers and the Mariners Advisory Committee of the Port of Philadelphia.

If an applicant does not successfully pass on the first attempt, the final regulations provide for additional opportunities for an applicant to pass the written exam. An oral examination, which is recorded and filed with the Commission, may be administered if an applicant's existing medical condition so requires. After three examinations, the Commission may determine if additional examination opportunities may be provided to the applicant. In addition, the original copies of all written examinations are filed with the Commission as part of its permanent records.

§ 405.5 (Classification of pilots)

In order to facilitate reference to the applicable statutory provision designating the classes of pilots and defining them as suggested by IRRC, final section 405.5 lists the appropriate citation as 55 P.S. § 42(a).

§ 405.7 (Qualifications for license)

Final subsection 405.7(a)(3) strikes the phrase “any cause” and replaces it with the specific criteria of when a physical examination may be ordered by the Commission, as suggested by IRRC. In this same clause, the Commission added the term “Applicant,” addressing IRRC’s suggestion by clarifying that this section applies to both initial applicants and to pilots who renew their licenses. Also, the Commission believes that the second sentence of subsection 405.7(a)(3) should remain in section 405.7 because it is a major qualification for licensure. A reference to section 405.8 is provided in the first sentence of subsection 405.7(a)(3). Furthermore, section 405.12 (relating to renewal of license) references this and other subsections of 405.7. Finally, at the suggestion of IRRC, the Commission included as an option the submission of the current or successor form of the “Merchant Marine Personnel Physical Examination Report” of the U.S. Coast Guard as proof of a physical examination.

At subsection 405.7(a)(4), the Commission made several changes to final rulemaking, as suggested by IRRC. First, the Commission added a procedure in which the random drug testing will be conducted by a testing agency satisfactory to the Commission. Second, any pilot who tests positive for the presence of drugs must be immediately reported to the Commission. Finally, all other test results must be filed with the Commission prior to March 1 of each year. This verifies compliance and clarifies what documentation is required and where it is to be filed.

As suggested by IRRC, final subsection 405.7(a)(9) references section 405.15, which sets the applicable license fee.

Final subsection 405.7(c) references section 405.4, which relates to the specific examination requirements necessary to obtain a pilot’s license and addresses the details concerning the exam’s format, which was a question raised by IRRC. The final section 405.4 contains precise language expressing what is considered a “passing grade,” what is done if an applicant fails the examination, the circumstances under which additional examinations may be administered, and the conditions in which oral examinations may be given.

§ 405.8 (Physical examination qualifications)

At the suggestion of HPLC, the U.S. standard system of visual acuity replaced the metric system as the means of measurement, and the term “Examination” was added to the title of final section 405.8. The Commission also amended this section to include the

use of information provided in the current or successor form of the "Merchant Marine Personnel Physical Examination Report" of the United States Coast Guard to determine the presence of any medical condition that may directly affect one's ability to pilot a ship safely, as suggested by IRRC.

§ 405.9 (Apprentices)

In order to determine if an applicant is of "good moral character," the Commission added specific provisions to final subsection 405.9(a)(1), as suggested by IRRC, including: letters of reference, questions regarding the criminal record of the applicant on application forms, and information within the possession of the United States Coast Guard since some applicants may have obtained a U.S. Coast Guard license, as provided by subsection 405.9(a)(2)(ii).

Section 405.9(a)(3)(ii) was amended to refer to vessels of one hundred six thousand tons to track the statutory language at 55 P.S. § 44(b). Tracking the statutory language was also an issue at section 405.9(b)(1). HPLC and IRRC suggested that the language of section 405.9(b)(1) should be consistent with the enabling statute, 55 P.S. § 44(b). The Commission added language to final subsection 405.9(b)(1) that mirrors the enabling statute, stating that an apprentice who, "at the time of appointment, holds at least a third mate's license need be an apprentice no longer than 3 years."

At the suggestion of IRRC, the Commission clarified the requirements under final subsection 405.9(b)(4) of how many and at what intervals reports are required to be filed by pilots who train apprentices. This final subsection, in accordance with Act 11 of 2001, requires pilots to maintain an activity record of each trip on an apprentice's weekly activity record. The final subsection also articulates the specific information that shall be incorporated with the apprentice's weekly activity record including: the date of the trip, the name of the vessel, where the trip began and ended, and any other information requested by the Commission. In addition to the weekly activity records, at least one pilot evaluation of each apprentice's performance shall be filed on a quarterly basis with the joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator. An exception for the required evaluation is made for the first two quarters of an apprentice's program because during that initial time frame, the apprentice is primarily observing the piloting of vessels, so there are not sufficient opportunities to evaluate the apprentice's performance. The Commission placed in final subsection 405.9(b)(5) the requirement that the joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator report to the Commission, at each meeting, the activities and performance of the Pennsylvania apprentices in the program.

§ 405.12 (Renewal of license)

At the suggestion of IRRC, final section 405.12 references section 405.15 for payment of the required license renewal fee.

§ 405.19a (*Docking, undocking and anchoring of vessels*)

Pursuant to HPLC's suggestion, the title of final section 405.19a was underlined indicating that it is a new section.

At the suggestion of IRRC, the Commission deleted any reference to Delaware state-licensed pilots from the language of final section 405.19a. The reference to Pennsylvania was deleted for clarity to remain consistent with the terminology used elsewhere to refer to state-licensed pilots.

§ 405.21 (*Accident reports*)

The Commission inserted the language "within 5 days of the accident" to describe the length of time a pilot has to submit a written report of an accident, as suggested by IRRC. The Commission also altered the provision to read, "a pilot involved in a marine accident *while on duty*..." to clarify this point, as suggested by IRRC. Also at the suggestion of IRRC, the required number to make a telephonic report is clearly stated as the number listed at the issuance of each license or on the annual license renewal notice. This number is (717) 783-7200, which is the primary extension of the Department of State, Bureau of Professional and Occupational Affairs. This number is staffed by an operator at all times during normal business hours and has voice-mail capabilities at all other times, including weekends.

VI. *Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1, the Commission invited comments from the regulated community and interested parties. In drafting the proposed regulations, the Commission had extensive consultations with, and input from The Pilots' Association for the Bay and River Delaware, a business association representing the interests of all state-licensed pilots in Pennsylvania and Delaware. In addition, the Commission consulted with the American Pilots' Association, the United States Coast Guard and the National Transportation Safety Board. When the regulations were proposed, the Commission received no public comments.

VII. *Fiscal Impact*

The amendments promulgated by the Commission will have no measurable fiscal impact on the Commonwealth, its political subdivisions, or the private sector because fees paid by licensees support the Navigation Commission. The changes are in harmony with current federal regulations and recommendations as well as with stricter regulations now present in Delaware. Although these changes will not have a substantial fiscal impact because Pennsylvania pilots have already implemented many of them, there may be a minimal fiscal impact, which cannot be calculated at this time.

VIII. *Paperwork Requirements*

The amended and revised regulations will require the Commission to update its license renewal forms and its application forms for pilot's licenses and for apprentice appointments. However, the amendments do not create new paperwork for other agencies of the Commonwealth, political subdivisions of the Commonwealth, or the general public.

IX. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission submitted a copy of the proposed rulemaking, published at 30 Pa.B. 3179, on June 14, 2000 to IRRC, the Senate Consumer Protection and Professional Licensure Committee and HPLC. In addition to submitting the regulation, the Commission also provided IRRC and the Committees with copies of a Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1 (relating to regulatory review and promulgation).

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), this final-form regulation was (deemed) approved by HPLC on _____ and (deemed) approved by the Senate Consumer Protection and Professional License Committee on _____. IRRC met on _____ and (deemed) approved the amendments in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)).

X. *Contact Person*

Interested persons may contact Louis Lawrence Boyle, Deputy Chief Counsel, Pennsylvania Department of State and Counsel to the Navigation Commission for the Delaware River and its Navigable Tributaries, 302 North Office Building, Harrisburg, PA 17120-0029.

XI. *Findings*

The Commission finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This amendment does not enlarge the purpose of proposed rulemaking published at 30 Pa.B. 3179 on June 24, 2000.

(4) This amendment is necessary and appropriate for administering and enforcing the authorizing acts identified in this preamble.

XII. *Order*

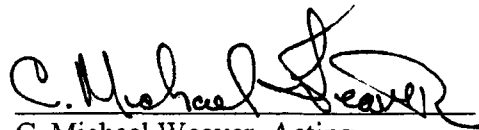
The Commission, acting under its authorizing statutes, orders that:

(a) The regulations of the Commission, 4 Pa. Code Chapters 401, 402, 403 and 405, are amended as set forth in Annex A.

(b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.



C. Michael Weaver, Acting
Secretary of the Commonwealth and
Chairman, Navigation Commission
for the Delaware River and its
Navigable Tributaries

Annex A

TITLE 4. COMMERCE AND TRADE

**PART XIII. NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS
NAVIGABLE TRIBUTARIES**

CHAPTER 401. GENERAL PROVISIONS

§ 401.1. Definitions.

The following words and terms, when used in this part, [shall] have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Department--The Department of [Commerce] State of the Commonwealth.

* * * * *

Secretary--The Secretary of [Commerce of] the Commonwealth.

§ 401.2. Commission office.

(a) The [address of the] ~~principal~~ office of the Commission is [as follows: Navigation Commission for the Delaware River] ~~located in the Philadelphia State Office Building, 1400 Spring Garden Street, Philadelphia,~~ [Pennsylvania 19130] LOCATED AT THE DEPARTMENT OF STATE, 302 NORTH OFFICE BUILDING, HARRISBURG, PA 17120-0029. ALL FORMS MAY BE OBTAINED FROM THE DEPARTMENT OR BY CALLING (717) 787-6802.

(b) ~~The administrative office of the Commission is located at 302 North Office Building, Harrisburg, PA 17105-2649.~~

CHAPTER 402. ADMINISTRATION

* * * * *

§ 402.4 Department of ~~Commerce~~ STATE Commission.

* * * * *

§ 402.5. [Composition of Commission] (Reserved).

[The Commission will consist of nine members as follows:

(1) Four appointed by the Governor, by and with the advice and consent of a majority of the members of the Senate as follows:

(i) Two of whom shall be residents of Delaware County.

(ii) One of whom shall be a resident of Bucks County.

(iii) One of whom shall be a resident of Philadelphia County.

(2) Two appointed by the Mayor of the City of Philadelphia.

(3) One to be the Secretary of the Department of Environmental Protection or designee who will serve ex officio.

(4) One to be the Director of Commerce of the City of Philadelphia who shall serve ex officio.

(5) One to be Secretary or a designee.]

* * * * *

§ 402.9. [Quorum] (Reserved).

[A majority of the Commissioners, appointed by the Governor and the Mayor of the City of Philadelphia, will constitute a quorum for the transaction of business.]

§ 402.10. [Standing committees] (Reserved).

[(a) The standing committees of the Commission will be as follows:

(1) Committee on Navigation and Pilotage, which will conduct hearings and make recommendations to the Commission on matters related to Chapters 405 and 407 (relating to pilots and pilotage and navigation).

(2) Committee on Construction, wharves and docks, which will conduct hearings and make recommendations to the Commission on matters related to Chapters 403 and 409 (relating to construction permits and wharves and docks).

(b) Chairpersons and members of standing committees will be appointed by the Chairperson.]

§ 402.11. Meetings.

(a) The regular meetings of the Commission will be [on the second Tuesday of every month unless cancelled by the Chairperson for lack of business to transact, with] held semiannually after public notice [made] as required by ~~law~~ **65 PA.C.S. CH. 7.**

(b) Special meetings may be called by the [Chairman] Chairperson after 3 days notice [given] to the [members of the] Commission and after public notice [made] as required by ~~law~~ **65 PA.C.S. CH. 7.**

[(c) Meetings of the committees may be called by committee chairpersons after three days notice given to the members of the committees and public notice made as required by law.]

(C) MEETINGS OF THE COMMISSION SHALL BE HELD IN THE CITY OF PHILADELPHIA OR AT A LOCATION DETERMINED BY A MAJORITY VOTE OF THE COMMISSION.

* * * * *

CHAPTER 403. [CONSTRUCTION PERMITS] (Reserved)

(Editor's Note: As part of this final rulemaking, the Commission is deleting the existing text of Chapter 403, 4 Pa.Code pages 403-1--403-5, serial pages (229967)--(229971).)

§ § 403.1--403.5. (Reserved).

§ § 403.11--403.14. (Reserved).

§ § 403.21--403.25. (Reserved).

CHAPTER 405. PILOTS AND PILOTAGE

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§ 405.2. [Authority] (Reserved).

[(a) Section 4 of the act of March 29, 1803 (P. L. 542, 4 Sml 67) (55 P. S. § 31) authorizes the Commissioners the full power and authority, under the limitations prescribed in the act, to grant licenses to persons to act as pilots in the River and to make rules for the government while employed in that service, to decide, on application of the parties in interest, all differences which may arise between masters, owners and consignees of ships or vessels, and pilots, and to make, ordain and publish rules and regulations with penalties for the breach thereof in respect of the matters aforesaid, as they shall deem fitting and proper.

(b) Section 12 of the act of June 8, 1907 (P. L. 469, No. 317) (55 P. S. § 111) authorizes the Commission to take the necessary action to enforce the laws of the Commonwealth pertaining to pilots and pilotage in the bay and River.

(c) Section 4 of the act of 1976 authorizes the Commission to do the following:

- (1) Develop, implement and administer a pilot licensure testing program.
- (2) Maintain a complete set of records relating to the licensure of pilots.
- (3) Impose fines and penalties including revocation of pilot's license for violation of Commission rules and regulations.]

§ 405.3. Application for licensure or apprenticeship.

[(a) Every person not now a licensed pilot, and who desires to exercise the profession of pilot in the River shall appear in person before the Commission for an application for a license to entitle him to follow that occupation.] An applicant for initial issuance of a pilot's license, for renewal of a pilot's license or for appointment as an apprentice shall submit an application on a form provided by the Commission. ALL FORMS MAY BE OBTAINED FROM THE DEPARTMENT OF STATE, 302 NORTH OFFICE BUILDING, HARRISBURG, PA 17120 OR BY CALLING (717) 787-6802.

[(b) Application for appointment as an apprentice pilot shall be made upon a completed Form DC-752 (10-76) (Application for Appointment as Apprentice Pilot).

(c) Application by an apprentice for a license shall be made upon a completed Form DC-753 (10-76) (Application for Fourth Class Pilot's License).

(d) Application by a fourth class pilot for a third class license shall be made upon a completed Form DC-754 (10-76) (Application for Third Class Pilot's License).

(e) Application by a third class pilot for a second class license shall be made upon a completed Form DC-755 (10-76) (Application for Second Class Pilot's License).

(f) Application by a second class pilot for a first class license shall be made upon a completed Form DC-756 (10-76) (Application for First Class Pilot's License).]

§ 405.4. Examination for sixth-class license.

(a) The Commission will [call to their assistance as many pilots of the first class as they may see fit, not less than three in number, to examine every person so applying as to his fitness in all respects to perform the duties of a pilot] designate at least three first-class pilots to conduct or develop an oral or written examination of an applicant for a sixth-class pilot's license for the purpose of ascertaining the applicant's fitness to perform the duties of a pilot. The Commission will fix the date, time, manner and place of the examination.

(b) {Applicants for a ~~fourth~~ SIXTH class license must pass a AN INITIAL written ~~and oral~~ examination ~~with a score of at least 90%~~ } THAT IS COMPRISED OF THE FOLLOWING FOUR PARTS:

- (i) RULES OF THE ROAD;
- (ii) CHART WORK;
- (iii) SHIPHANDLING AND ANCHORING; AND
- (iv) LOCAL KNOWLEDGE.

A PASSING GRADE ON PARTS (i) AND (ii) IS 90%, AND A PASSING GRADE ON PARTS (iii) AND (iv) IS 80%. THE WRITTEN EXAMINATIONS WILL CONSIST OF AT LEAST 50 QUESTIONS ON EACH PART EXCEPT CHART WORK. APPLICANTS WHO DO NOT ATTAIN A PASSING SCORE ON ANY PART OF THE INITIAL EXAM SHALL BE GIVEN ANOTHER WRITTEN EXAMINATION ON THAT PART THAT THE APPLICANT DID NOT PASS. IF AN APPLICANT FAILS TO PASS THE SECOND

WRITTEN EXAMINATION ON ANY PART, THEN THE APPLICANT SHALL BE GIVEN A THIRD WRITTEN EXAMINATION ON THAT PART THAT THE APPLICANT DID NOT PASS. WHEN AN APPLICANT IS UNABLE FOR A MEDICAL REASON, SUCH AS DYSLEXIA, TO SUCCESSFULLY PASS TWO DIFFERENT WRITTEN EXAMINATIONS, THE COMMISSION MAY APPROVE AN ORAL ADMINISTRATION OF THE EXAMINATION. AFTER THREE EXAMINATIONS, THE COMMISSION MAY DETERMINE IF ADDITIONAL EXAMINATION OPPORTUNITIES SHALL BE PROVIDED TO ANY APPLICANT. The examination for a sixth-class pilot's license may consist of, but not be limited to, the following topics:

* * * * *

(8) [Rules] Regulations of the Commission.

* * * * *

(c) [Further examination as the Commission may consider necessary to establish the proficiency of the applicant may be required.] Each oral examination shall be tape-recorded, and the original copy of the recording shall be filed with the Commission as part of its permanent records. If a written examination is given, the original copy of the written examination shall be filed with the Commission as part of its permanent records.

§ 405.5. [Classifications of pilots] (Reserved).

[(a) *Pilots of the first class.* Persons capable of piloting ships or vessels of any practicable draught of water.

(b) *Pilots of the second class.* Persons capable of piloting ships and vessels drawing 34 feet of water or under.

(c) *Pilots of the third class.* Persons capable of piloting ships or vessels drawing 27 feet of water or under.

(d) *Pilots of the fourth class.* Persons capable of piloting ships or vessels drawing 23 feet of water or under.]

FOR CLASSIFICATIONS OF PILOTS, SEE 55 P.S. § 42(A).

§ 405.6. [Underrate pilot limitations] (Reserved).

[(a) Fourth class pilots shall be subject to the following limitations:

(1) For the first 35 ships; 9,500 gross tons, 575 feet length overall and 23 feet draft.

(2) For the next 35 ships; 15,000 gross tons, 625 feet length overall and 23 feet draft.

(3) Then 18,000 gross tons, 675 feet length overall and 23 feet draft.

(b) Third class pilots shall be subject to the limitations of 30,000 gross tons and 27 feet draft.

(c) Second class pilots--first year--shall be subject to the limitations of 40,000 gross tons and 34 feet draft.

(d) Second class pilots--second year--shall be subject to a limitation of 34 feet draft.]

§ 405.7. Qualifications [of pilots] for license.

(a) [A license may not be granted to any person to act as a pilot of the fourth class unless he has reached the age of 18 and has served a regular apprenticeship of 4 years on board a pilot boat.

(b) A license of the third class may not be granted to any person, unless he shall have served at least 1 year as a fourth class pilot.

(c) A person may not be eligible for a license of the second class who has not served 1 year in the fourth class and at least 1 year in the third class.

(d) A person may not be eligible for a license of the first class who has not served a total of at least 4 years in the second, third and fourth classes, with at least 2 years of the service having been served in the second class.

(e) A license may not be granted to or renewed for any person to act as a pilot of any class unless he is qualified as a radar observer as evidenced by one of the following:

(1) A current Federal pilot's license issued by the United States Coast Guard containing an endorsement that the licensee is so qualified.

(2) A certificate issued by the New York Maritime Administration Office or other certification acceptable to the Commission, dated not more than 5 years prior to the date on which the license is to be granted, evidencing satisfactory completion of the course of instruction for radar

observers.]

An applicant for the initial issuance of a pilot's license in any class shall:

(1) Except for first-time applicants for a sixth class license, have served at least 1 year in each of the license classes below the class of license applied for.

(2) Have complied with subsection (d).

(3) Have passed a physical examination within 6 months of the date of application based on the requirements of § 405.8 (relating to physical qualifications), as evidenced by a physician's statement. AS PROOF OF A PHYSICAL EXAMINATION, PILOTS MAY SUBMIT THE CURRENT OR SUCCESSOR FORM OF THE "MERCHANT MARINE PERSONNEL PHYSICAL EXAMINATION REPORT" OF THE UNITED STATES COAST GUARD. Physical examinations may also be ordered by the Commission for any pilot OR APPLICANT at any time for any THAT THERE IS cause TO BELIEVE THAT THE PHYSICAL CONDITION OF THE PILOT OR APPLICANT MAY BE SO IMPAIRED AS TO IMPACT THE PILOT OR APPLICANT'S ABILITY TO DISCHARGE HIS OR HER DUTIES.

(4) Have participated in a program of random drug testing during the preceding license period CALENDER YEAR that meets the standards of Coast Guard Regulations under 46 CFR Part 16 (relating to chemical testing). SUCH RANDOM DRUG TESTING SHALL BE PERFORMED BY A TESTING AGENCY SATISFACTORY TO THE COMMISSION. THE TESTING AGENCY CONDUCTING THIS RANDOM DRUG TESTING SHALL SUBMIT TO THE COMMISSION DOCUMENTATION OF THE RESULTS IMMEDIATELY FOR ANY PILOT WHO TESTS POSITIVE. THE TESTING AGENCY CONDUCTING THIS RANDOM DRUG TESTING SHALL SUBMIT TO THE COMMISSION DOCUMENTATION OF THE RESULTS FOR ALL OTHER PILOTS PRIOR TO MARCH 1 OF EACH YEAR.

(5) Have been qualified as a radar observer, as evidenced by one of the following:

(i) A radar observer endorsement on a current Federal pilot's license.

(ii) A certificate issued by a Coast Guard-approved authority reflecting that the certificateholder satisfactorily completed a course of instruction for radar observers, within 5 years of the date of application.

(6) Have completed a Commission-approved course in bridge resource management within 3 years of the date of application or renewal.

(7) Have completed a Commission-approved course in automatic radar plotting aids (ARPA) once in a pilot's career.

(8) Post a surety bond that satisfies the requirements of § 405.13 (relating to bonding).

(9) Pay the required license fee, AS SPECIFIED IN § 405.15.

(b) In addition to meeting the requirements of subsection (a), a first-time applicant for a first-class pilot's license shall:

(1) Have completed 40 hours of Commission-approved continuing education in navigation, ship handling or related topics within the preceding 5 years. Courses in the required areas of radar observer, ARPA and bridge resource management may count towards the 40-hour total. The Commission will approve the education facilities that qualify to provide this education. This continuing education requirement shall become effective _____

(Editor's Note: The blank refers to a date 2 years from the date of publication of the final adoption of this proposal.)

(2) Have appeared before the Commission for a personal interview.

(c) In addition to meeting the requirements of subsection (a), an applicant for a sixth-class pilot's license shall score a passing grade or better on an examination, as provided in § 405.4(B) (relating to examination for sixth-class license). ~~The Commission may conduct further oral or written examinations it deems necessary to establish an applicant's proficiency.~~ Prior to taking the examination, the applicant shall:

(1) Be at least 21 years of age.

(2) Be within 3 months of completing a Commission-approved apprenticeship.

(3) Have acquired a current Federal pilot's license for the Delaware River issued by the Coast Guard.

(d) In addition to meeting the requirements of subsection (a), applicants for a pilot's license:

(1) Shall have piloted at least 52 vessels during the preceding license period, if the applicant is a current license-holder, unless waived by the Commission under paragraph (2).

(2) May seek a waiver from the Commission of the requirement of paragraph (1), in whole or in part, for illness, disability or other good cause that prevents a pilot from piloting the required number of vessels. If a waiver is granted, the Commission may condition the issuance of the license on the applicant's completion of refresher trips up or down the river as may be necessary to ensure that the applicant is familiar with current conditions along the route. Refresher trips shall be made in the company of a first-class pilot.

§ 405.8. Physical [examinations] EXAMINATION qualifications.

[(a)] The physical qualifications for a pilot [shall be] or apprentice are as follows:

(1) [*Visual. Ability to achieve visual classification*] Visual acuity of ~~6/9~~ 20/30 in one eye and ~~6/24~~ 20/80 in the other—correctable to ~~6/6~~ 20/20 [in one eye] and [at least] ~~6/9~~ 20/30 [in the other], respectively—and normal color perception.

(2) [*Hearing. Ability to maintain hearing*] Hearing acuity to the [minimum] extent of correctly repeating, with eyes closed, words or numbers spoken by the examiner in an ordinary conversational tone of voice from a distance of 20 feet[, the person being examined having his eyes closed during the period of the test. This examination applies equally to each ear with the person being examined closing one ear in turn and directing the open ear towards the examiner]. Each ear shall be tested separately; the ear being tested shall be turned in the direction of the examiner while the other ear is plugged.

(3) [*Other. The Commission will take into consideration any and all information supplied by an examining physician when determining the physical fitness of any pilot.*] The absence of any medical condition that may directly affect one's ability to pilot a ship safely, AS NOTED ON THE CURRENT OR SUCCESSOR FORM OF THE "MERCHANT MARINE PERSONNEL PHYSICAL EXAMINATION REPORT" OF THE UNITED STATES COAST GUARD.

[(b)] Physical examinations shall be required as follows:

(1) Every 3 years for pilots 50 years of age and under.

(2) Every year for pilots over 50 years of age.

(3) By all applicants for apprenticeship.]

§ 405.9. Apprentices.

(a) [The term of apprenticeship for the profession of pilot is 4 years.

(b) During the last 2 years of apprenticeship, apprentices shall make at least 350 trips up or down the River in vessels with first or second class pilots, provided that at least 48 trips are made each year.

(c) It shall be the duty of every pilot who brings up or takes down an apprentice to report the trips in writing to the Office of the Commissioners.

(d) The name of every apprentice, together with the name of the vessel and her master, in which every apprentice has come up or gone down shall be recorded by the Commissioners in a book to be kept by them for that purpose. Indentures of apprentices to pilots shall be recorded in the Office of the Commission.]

Apprentice qualifications. An applicant for an apprenticeship as a pilot shall:

(1) Be of good moral character. THE COMMISSION MAY USE ANY OF THE FOLLOWING METHODS TO DETERMINE MORAL CHARACTER, INCLUDING BUT NOT LIMITED TO:

(i) LETTERS OF REFERENCE;

(ii) QUESTIONS REGARDING THE CRIMINAL RECORD OF THE APPLICANT ON APPLICATION FORMS; OR

(iii) RELEVANT INFORMATION WITHIN THE POSSESSION OF THE UNITED STATES COAST GUARD SUCH AS ANY ACTION TAKEN AGAINST THEIR COAST GUARD LICENSE, IF APPLICABLE.

(2) Have acquired one of the following:

(i) A baccalaureate degree from a recognized and certified college or university or from a maritime academy operated by the United States or any state.

(ii) A Coast Guard-issued license to serve as a third mate on all oceans aboard vessels of any gross tons ONE THOUSAND SIX HUNDRED TONS, or a higher class of license.

(3) Have passed a physical examination within 6 months of the date of application based on the requirements of § 405.8 (relating to physical examinations), as evidenced by a physician's statement.

(b) Conduct of apprenticeship. An apprenticeship shall provide the theoretical education and supervised practical experience required for licensure as a sixth-class pilot and shall be conducted as follows:

(1) Every apprentice shall serve an apprenticeship of 4 years, except that an apprentice who, at the time of appointment, holds at least a third mate's license under subsection (a)(2)(ii) may serve ~~NEED BE an apprenticeship~~ of NO LONGER THAN 3 years.

(2) The theoretical aspect of an apprenticeship shall cover, but not be limited to, the topics in 405.4 (relating to examination for license).

(3) An apprentice shall make at least 500 trips up or down the river in vessels with a pilot licensed by Pennsylvania or Delaware.

(4) The pilots who train an apprentice shall file reports MAINTAIN A RECORD OF EACH TRIP ON THE APPRENTICE'S WEEKLY ACTIVITY RECORD with the joint Pennsylvania/Delaware Apprentice Pilot Training Program Administrator, who shall file reports with the Commission on the activities and performance of the Pennsylvania apprentices in the apprentice program. EACH APPRENTICE'S WEEKLY ACTIVITY RECORD SHALL INCLUDE: THE DATE OF THE TRIP, THE NAME OF THE VESSEL, WHERE THE TRIP BEGAN AND ENDED, AND ANY OTHER INFORMATION REQUESTED BY THE COMMISSION. AT LEAST ONE PILOT WHO TRAINS AN APPRENTICE SHALL ALSO CONDUCT AN EVALUATION OF EACH APPRENTICE'S PERFORMANCE ON AT LEAST A QUARTERLY BASIS, EXCEPT DURING THE FIRST TWO QUARTERS OF THE APPRENTICE'S PROGRAM, AND SHALL FILE THE EVALUATION WITH THE JOINT PENNSYLVANIA/DELAWARE APPRENTICE PILOT TRAINING PROGRAM ADMINISTRATOR.

(5) THE JOINT PENNSYLVANIA/DELAWARE APPRENTICE PILOT TRAINING PROGRAM ADMINISTRATOR SHALL FILE SUMMARY REPORTS WITH THE COMMISSION AT EACH MEETING ON THE ACTIVITIES AND PERFORMANCE OF THE PENNSYLVANIA APPRENTICES IN THE APPRENTICE PROGRAM.

§ 405.10. Term of license.

[Each license shall be in force for 1 year from the issuance date unless revoked by the Commission.] A license shall be for a term of 1 year, subject to renewal by the Commission.

§ 405.11. Nondiscrimination.

The Commission will comply with applicable State and Federal laws prohibiting discrimination in licensing or apprenticeship opportunities. A person [may] will not be denied a license, refused an apprenticeship indenture, refused sponsorship for a pilot's license or discriminated against in the provision of pilotage services [on the basis] because of race, religion, [National] national origin, sex or age.

§ 405.12. Renewal of license.

(a) [Every pilot shall be entitled to receive a new license each year unless disqualified from exercising the duties of a pilot by the Commission.

(b) Application for a renewal of license shall be made upon a completed, Form DC-757 (10-76) (Application for Renewal of Pilot's License).]

An applicant for renewal of a pilot's license in any class shall:

(1) Have satisfied the requirements of § 405.7(a)(1)--(6) and (8) (relating to qualifications for license).

(2) Pay the required renewal fee, AS SPECIFIED IN § 405.15.

(b) In addition to meeting the requirements of subsection (a), an applicant for renewal of a first class pilot's license shall have completed 40 hours of Commission-approved continuing education in navigation, ship handling or related topics within the preceding 5 years. Courses in the required areas of radar observer, automatic radar plotting aids (ARPA) and bridge resource management may count towards the 40-hour total. The Commission will approve the education facilities that qualify to provide this education. This continuing education requirement shall become effective _____

(Editor's Note: The blank refers to a date 2 years after adoption of this proposal.)

* * * * *

§ 405.14. [Number of pilots and apprentices] (Reserved).

[(a) A person may not receive a license as a first-class pilot until the number of first and second-class pilots be reduced to less than 42 and that the whole number of first and second-class pilots shall not exceed 42.

(b) The number of third-class and fourth-class pilots may not exceed ten.

(c) The number of apprentices indentured will be wholly within the discretion of the Commission.]

* * * * *

§ 405.16. [Acting as pilot without license] (Reserved).

[If any person shall in any manner exercise or attempt to exercise the profession of a pilot in the bay or River, except in vessels under 75 tons burden, without license duly granted or at any time after his license shall have expired, he shall be guilty of a misdemeanor, and, upon conviction thereof, he shall be imprisoned for not less than one month nor more than one year and be fined a sum not exceeding \$200, at the discretion of the court.]

§ 405.17. [Offering services] (Reserved).

[The pilot who shall first offer himself to any inward-bound ship or vessel shall be entitled to take charge thereof; provided, his license shall authorize him to pilot ships or vessels of such draught of water and tonnage burden, and it shall be duty of such pilot, if required so to do, to exhibit his license to the master or commander of such ship or vessel. In case the draught of water or tonnage burden of such ship or vessel shall be greater than such pilot shall be licensed to carry, he may nevertheless, with the consent of the master, take charge of such ship or vessel until a pilot duly qualified shall offer.]

§ 405.18. [Vessels required to take on pilot] (Reserved).

[(a) Every ship or vessel arriving from or bound to any foreign port or place shall be obliged to receive a pilot, except as exempted by law.

(b) Any ship or vessel voluntarily taking a pilot shall pay a fee which is no more than the fee for pilotage as is prescribed in case of a vessel bound to or from a foreign port.]

* * * * *

§ 405.19a. Docking, undocking and anchoring of vessels.

When a vessel which has taken aboard a Pennsylvania or Delaware state-licensed pilot is docking, undocking or anchoring, the Pennsylvania or Delaware state-licensed pilot shall remain on the bridge, attentive to duty, until the vessel has at least one ship's line secured to the dock or

until the vessel is anchored properly and firmly within a designated anchorage area or until the state-licensed pilot is discharged at the pilot station area upon the vessel's departure to sea. This section does not prohibit the master of a vessel from employing the services of a docking master.

* * * * *

§ 405.21. Accident reports.

(a) Written report. [It shall be the duty of every] A pilot involved in a marine accident WHILE ON DUTY [to give] shall submit within 5 days a written report of the accident [promptly] WITHIN 5 DAYS OF THE ACCIDENT to the Commission AT THE ADDRESS OR FACSIMILE NUMBER LISTED AT THE ISSUANCE OF EACH LICENSE OR LICENSE RENEWAL NOTICE [whenever] if the accident results in [any] one of the following:

* * * * *

(5) Injury causing [any persons] a person to remain [incapacitated for a period] hospitalized in excess of 72 hours.

(b) Telephonic report. In addition to submitting a written report under subsection (a), a pilot involved in a marine accident WHILE ON DUTY shall make a telephonic report of the accident to the Commission TO TELEPHONE NUMBERS LISTED AT THE ISSUANCE OF EACH LICENSE OR ON THE ANNUAL LICENSE RENEWAL NOTICE within 24 hours of the accident if the accident results in one of the following:

(1) Loss of life.

(2) Collision or grounding.

(3) Oil spill.

(c) Contents of report. [The] An accident [reports] report, whether written or telephonic, shall [identify] set forth the following:

(1) Vessels and objects involved in the accident.

(2) Location, date and time of the accident.

(3) Weather and sea conditions when the accident occurred.

- (4) Events and circumstances leading to the accident.
- (5) Nature of the accident.
- (6) Nature of loss or damage resulting from the accident.

[(c)] (d) Coast Guard Report. A pilot may submit a copy of a completed [United States] Coast Guard Report of Vessel Casualty or Accident Form [and], along with any attachments [thereof is acceptable] to satisfy the requirements of subsectionS (a) AND (C).

* * * * *

§ 405.27. [Rates for pilotage between Capes and port] (Reserved).

[For services rendered, the rates of pilotage for conducting a vessel from the Capes of the Delaware to a place on the River no further upriver than the Delair Railroad Bridge between Philadelphia, Pennsylvania and Delair, New Jersey or from a place on the River no further upriver than the Delair Railroad Bridge between Philadelphia, Pennsylvania and Delair, New Jersey to the Capes of the Delaware, in either case, shall be the total of the charges resulting from the two following computations:

(1) *Unit*. Unit charges shall be as follows:

(i) A charge, to be known as a unit charge, shall be made for each pilotage, determined by length overall, in feet, multiplied by the extreme breadth, in feet, of the vessel, divided by 100.

(ii) For the purposes of this section, the following definitions shall be applied:

(A) *Extreme breadth*--The maximum breadth between the outside of the shell platings of the vessel.

(B) *Length overall*--The distance between the forward and after extremities of the vessel.

(C) *Measurements*--Designated in feet and inches, United States. Inches shall be converted to feet as follows:

1 inch = .1 feet 2 inches = .2 feet 3 inches = .3 feet 4 inches = .3 feet 5 inches = .4 feet
6 inches = .5 feet 7 inches = .6 feet 8 inches = .7 feet 9 inches = .8 feet 10 inches = .8 feet
11 inches = .9 feet

(iii) The charges per unit shall be as follows:

- (A) Vessels not in excess of 300 units 604 per unit.
 - (B) Vessels in excess of 300 units but not in excess of 600 units \$180 plus 504 per unit in excess of 300 units.
 - (C) Vessels in excess of 600 units \$330 plus 404 per unit in excess of 600 units.
 - (D) There shall be a minimum unit charge of 200 units \$120.
- (2) *Draft*. Draft charges shall be as follows:
- (i) A charge, related to length and draft, shall be determined as follows:
 - (A) Vessels with a length overall not in excess of 550 feet: \$5.00 per 1/2 foot of draft.
 - (B) Vessels with a length overall in excess of 550 feet, but not in excess of 800 feet: \$5.50 per 1/2 foot of draft.
 - (C) Vessels with a length overall in excess of 800 feet: \$6.00 per 1/2 foot of draft.
 - (ii) All charges related to draft shall be based upon the charge of the nearest 1/2 foot of draft; thus there shall be no charge for the first three inches above any foot draft; above three inches, up to and including nine inches, the charge shall be for 1/2 foot of draft; above nine inches, the charge shall be for the next higher foot; provided, however, that any vessel with a draft of less than 12 feet shall pay pilotage under this computation as though the draft of the vessel were 12 feet.
- (3) *Winter pilotage*. No additional charge shall be made for winter pilotage.]

§ 405.28. [Rates of pilotage between Capes and breakwater] (Reserved).

- [(a) Every ship or vessel bound to the breakwater for orders shall pay pilotage fees consisting of a sum equal to 1/2 the pilotage to the port, and she shall be obliged to take a pilot and pay the same pilotage fees when outward bound from the breakwater.
- (b) If such ship or vessel, without discharging her pilot, proceeds to the port of Philadelphia or any other port or place on the River, only one full pilotage fee shall be paid, as fixed by § 405.27 (relating to rates for pilotage between capes and port) for the entire service in addition to the fee for detention.

(c) If the pilot bringing such ship or vessel to the breakwater is discharged there and if the ship or vessel afterward proceeds to Philadelphia or any other port or place on the River, she shall make the usual signal for a pilot and continue to make such signal till reaching Brandywine Light, and, if spoken by or offered the services of a licensed Commonwealth pilot before reaching Brandywine Light, she shall be obliged to employ such pilot and pay him for services rendered.]

§ 405.29. [Disabled vessels] (Reserved).

[The compensation to be paid to pilots for conducting to or from the port all dismasted or otherwise crippled vessels which shall have been in any way injured so as to occasion to such pilots any extraordinary care or trouble shall not exceed double the amount which they otherwise would have been entitled of which amount the Commission will be the judge.]

* * * * *

§ 405.31. [Extraordinary services] (Reserved).

[For extraordinary services rendered, the rates of pilotage shall be as follows:

(1) *Transportation of vessels on the river.*

Philadelphia (or other place) to MarcusHook	\$150
Philadelphia (or other place) belowMarcus Hook	\$175
Philadelphia Harbor to Torresdale	\$150
Philadelphia Harbor to any place above Torresdale	\$250

(2) *Extra services.*

Swinging ship to adjust Magnetic Compass.	\$ 65
Swinging ship to calibrate Direction Finder	\$ 65
Vessels anchoring below Brown Shoal in excess of three hours awaiting tide	\$125
Carried to/from New York, Norfolk or Baltimore	\$150

(3) *Chesapeake and Delaware Canal.*

Vessels with a length not in excess of 550feet	\$125
Vessels with a length overall in excess of 550 feet	\$150
(4) <i>Cancellation of Sailing Orders.</i>	
Cancellation Charge	\$ 65]

* * * * *

§ 405.33. [Neglect of duties] (Reserved).

[(a) If any person having a license as a pilot shall, for the space of 2 weeks, refuse or willfully neglect to execute the duties of a pilot, the person, upon due proof, shall forfeit his license.

(b) If any pilot shall enter into any combination with a view of preventing any other person from executing his duties, the pilot, upon proof, shall forfeit his license.

(c) This section may not be construed as to prevent any pilot from taking a leave from piloting for vacations, illness or contact with a contagious disease, jury duty, court attendance, Military Reserve or National Guard duties, or other appropriate reasons.]

* * * * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS NAVIGABLE TRIBUTARIES
302 North Office Building
Harrisburg, Pennsylvania 17120

Secretary of the Commonwealth

(717) 787-6458

May 1, 2002

The Honorable John R. McGinley, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, Pennsylvania 17120

Re: Notice of Final Rulemaking of the Navigation Commission for the Delaware River
and Its Navigable Tributaries – Navigation Licensure and Renewal (16A-662)

Dear Chairman McGinley:

Enclosed is a copy of a final regulation of the Navigation Commission pertaining to
Navigation Licensure and Renewal.

The Navigation Commission, as always, will be pleased to provide your Commission with
any assistance it may require during the course of its review of this regulation.

Sincerely,

C. Michael Weaver
Secretary of the Commonwealth (Acting) and
Chairperson of Navigation Commission for the
Delaware River And Its Navigable Tributaries

CMW:bjd
Enclosures

cc: John T. Henderson, Jr., Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
L. Lawrence Boyle, Deputy Chief Counsel and Counsel to the
Navigation Commission

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-662

SUBJECT: Navigation Commission for the Delaware River & Its Navigable Tributaries -
Navigation Licensure and Renewal

AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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DATE	SIGNATURE	DESIGNATION
5-1-02	Lou A. Clark	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
5-1-02	Charlotte Koser	
5/1/02	Janet Zuley	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
5/1/02	Stephane Smith	
5/1/02	Elina Pagan	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

April 11, 2002