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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 24, 2000

Honorable Kim Pizzingrilli, Chairperson
Navigation Commission for the Delaware River
and its Navigable Tributaries
302 North Office Building
Harrisburg, PA 17105

Re: Regulation #16A-662 (IRRC #2126)
Navigation Commission for the Delaware River and its Navigable Tributaries
Navigation Licensure and Renewal

Dear Chairperson Pizzingrilli:

Enclosed are our Comments. They are also available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Mario J. Civera, Jr., Majority Chairman, House Professional Licensure Committee
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee
Honorable Clarence D. Bell, Chairman, Senate Consumer Protection & Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection & Professional Licensure Committee
Dorothy Childress
L. Lawrence Boyle
Joyce McKeever

Comments of the Independent Regulatory Review Commission

on

Navigation Commission for the Delaware River and its Navigable Tributaries Regulation No. 16A-662

Navigation Licensure and Renewal

August 24, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Navigation Commission for the Delaware River and its Navigable Tributaries (NCDR) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by July 24, 2002, the regulation will be deemed withdrawn.

1. Section 401.2. Commission offices. - Clarity.

The amendment to Subsection (a) results in an incomplete address for the NCDR's principal office. The state and zip code are being deleted from the regulation. The final-form regulation should retain the state and proper zip code.

2. Section 405.3. Application for licensure or apprenticeship. - Clarity.

This section requires an applicant for licensure or apprenticeship to "submit an application on a form provided by the Commission." For improved clarity, the NCDR should specify where and how potential applicants can obtain copies of the application form.

3. Section 405.4. Examination for sixth-class license. - Reasonableness; Clarity.

Subsection (a) - Entry-level oral or written examination

This subsection is consistent with Subsection 17(a) of the act of March 29, 1803 (55 P.S. § 42(a)) in that the NCDR can designate at least three first-class pilots to examine an applicant. The subsection also states that the NCDR "will fix the date, time, manner and place of the examination."

In its comments on the regulation, dated August 11, 2000, the House Professional Licensure Committee (House Committee) questions the validity and/or reliability of the procedure in Subsection (a). The subsection states that the three or more NCDR-designated first-class pilots will "conduct or develop an oral or written examination..." However, there are no details concerning the format or length of the examination other than the list of topics in Subsection (b). What is meant by the words that the NCDR will "fix" the "manner" of the examination? What is the actual format of these examinations? How are the examination results validated? The

NCDR should respond to the House Committee by including the details of the examination procedure and validation process in the regulation.

4. Section 405.5. Classifications of pilots. - Clarity.

This section is being reserved. In the existing regulations, this section lists the classes of pilots and defines them. Under the proposed rulemaking, an individual would have to refer to the statute to find this information. For greater clarity and ease of reference, the NCDR should include in the regulation a reference to the statutory section where the pilot classifications are identified.

5. Section 405.7. Qualifications for license. - Reasonableness; Implementation procedures; Clarity.

Subsection (a)(3) - Annual physical examination

In addition to requiring annual physical examinations, Subsection (a)(3) includes this sentence:

Physical examinations may also be ordered by the Commission for any pilot at any time for any cause.

We have three related questions concerning this requirement.

First, the phrase “for any cause” is broad. Is that the intent? The regulation should establish criteria for when an examination may be necessary or provide examples of circumstances when it may be necessary.

Second, it appears that this statement is not necessarily linked to initial licensure or renewal but could be appropriate when there are questions concerning a licensee’s “physical qualifications.” Should the sentence be moved to Section 405.8 relating to physical qualifications?

Third, the Preamble states that when pilots renew their licenses they “customarily submit as proof of a physical examination the ‘Merchant Marine Personnel Physical Examination Report’ of the U.S. Coast Guard, Form CG-719K (Rev. 3-95).” If this form is useful and meets the requirements of the NCDR, why not list it as a requirement in the regulation? For example, it or successor form could be referenced in this subsection.

Subsection (a)(4) - Random drug testing

This subsection states that applicants for licensure and licensure renewal will “[h]ave participated in a program of random drug testing during the preceding license period that meets the standards of Coast Guard Regulations under 46 CFR Part 16.” How will participation be verified? What type of certification or documentation must the applicant submit and to whom should the documentation be submitted?

Subsection (a)(9) - License fee

This subsection states that applicants will “pay the required license fee.” For clarity, this subsection should reference Section 405.15 that sets the fee at \$200.

Subsection (c) - Examination requirement

In this subsection, applicants for a sixth-class pilot’s license, the entry-level position into the profession, are required to score a passing grade or better on the examination established in Section 405.4. We have two questions.

First, what is considered a “passing grade”? The existing requirement that applicants must pass an examination with a score of at least 90 percent at Subsection 405.4(b) is proposed for deletion in this rulemaking. Is there a new standard?

Second, Subsection 405.7(c) indicates that the NCDR may conduct additional examinations “it deems necessary to establish an applicant’s proficiency.” Under what circumstance would the NCDR “conduct further oral or written examinations”? Would this occur only when an applicant failed the examination established by Section 405.4? If not, we request that the NCDR explain why it is reasonable to further examine an applicant who has obtained a passing grade. What factors or standards will be used to determine that further examination is needed when the applicant has a passing grade? As we noted in Issue #3 related to the examination process, the regulation should include details for the supplemental examination process in this subsection.

6. Section 405.8. Physical qualifications. - Clarity.

Subsection (3) includes “The absence of any medical condition that may directly affect one’s ability to pilot a ship safely” as a physical qualification to be a pilot or apprentice. However, the regulation does not address how the NCDR will make this determination. Does the NCDR use the information submitted on the U.S. Coast Guard, Form CG-719K (Rev. 3-95) in making this determination? If the NCDR uses the information on this form or other information, the appropriate forms or information should be specified in the regulation.

7. Section 405.9. Apprentices. - Consistency with statute; Clarity.

Subsection (a)(1) - Apprentice qualifications

This subsection requires applicants to “be of good moral character.” How does the NCDR make this determination? For example, does the NCDR rely on a criminal history check in determining an applicant’s “moral character”? In the final-form regulation, the NCDR should identify the factors that will be used to determine “good moral character.”

Subsection (b)(1) - Length of apprenticeship

Apprentices are required to serve an apprenticeship of four years. The exception is an apprentice who holds a third mate’s license who “may serve an apprenticeship of 3 [three] years.” The House Committee compared this phrasing to the statute (55 P.S. § 44(b)) which states that the third mate’s “apprenticeship need be no longer than three years.” The House Committee suggests that the language of the regulation be consistent with the statute. We agree.

Subsection (b)(4) - Pennsylvania/Delaware Apprentice Training Program

This subsection requires the following:

The pilots who train an apprentice shall file reports with the joint Pennsylvania/Delaware Apprentice Pilot Training Program, who shall file reports with the Commission on the activities and performance of the Pennsylvania apprentices in the apprentice program.

We have three questions regarding this provision. First, how many reports is the pilot required to submit for each apprentice? Second, at what intervals are reports required? Third, what information must be included in the reports? The NCDR should address these questions and clarify the Subsection (b)(4) requirements in the final-form regulation.

8. Section 405.12. Renewal of license. - Clarity.

Subsection (a)(2) requires an applicant for renewal of a pilot's license to pay the renewal fee. For clarity, this subsection should reference Section 405.15 that sets the fee at \$200.

9. Section 405.19a. Docking, undocking and anchoring of vessels. - Statutory authority.

This section imposes requirements on Pennsylvania or Delaware state-licensed pilots. The preamble explains that this section codifies a May 1989 resolution issued by the NCDR. However, we have not identified a provision in the statute which authorizes the NCDR to regulate pilots who are licensed in other states. We request that the NCDR either identify its statutory authority for this provision or delete the reference to "Delaware state-licensed pilots."

10. Section 405.21. Accident Reports. - Reasonableness; Implementation procedures; Clarity.

Subsection (a) Written report

This subsection states that a pilot "involved in a marine accident shall submit within 5 days a written report of the accident to the Commission." It is assumed that this means within five days of the accident. If this is correct, then this subsection should use the same phrasing used in Subsection (b) that states that the pilot must make a telephonic report of the accident to the NCDR "within 24 hours of the accident."

Subsection (b) Telephonic report

In addition to a written report, a pilot involved in a marine accident must make a telephonic report. The content requirement for both written and telephonic reports are the same and are clearly established in Subsection (c). However, there is nothing that indicates the telephone number that a pilot should use to make the report. Do they call the Philadelphia office or Harrisburg? Is either office open or available for reports on weekends? Could the report be made by e-mail or fax? The regulation should include the telephone number, or state how and where pilots can obtain the number, and whether other electronic transfers are acceptable.

Finally, if the reporting requirements in this section only apply to pilots who are on duty at the time of the accident, then the regulation should be amended to specify "on-duty pilots."



INDEPENDENT REGULATORY REVIEW COMMISSION

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Date: August 24, 2000
of Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Navigation Commission for the Delaware River and its Navigable Tributaries's regulation #16A-682 (#2126). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Meredith Malone **Date:** 8/24/00