

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRRC's website)

(1) Agency:  
**Department of State, Bureau of Professional and Occupational Affairs, Navigation Commission for the Delaware River and Its Navigable Tributaries**

(2) Agency Number: 16A  
Identification Number: 16A-663

IRRC Number: 2995

2013 NOV - 6 AM 11: 24

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(3) PA Code Cite: 4 Pa. Code §§ 405.7, 405.8, 405.12 & 405.36

(4) Short Title: **General Revisions**

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: **Louis Lawrence Boyle, Counsel, Navigation Commission for the Delaware River and Its Navigable Tributaries, P.O. Box 2649, Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251) llboyle@pa.gov.**

Secondary Contact: **Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov.**

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- FINAL REGULATION**
- Final Omitted Regulation

- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

**The primary purpose of the proposed rulemaking would require licensed pilots in this Commonwealth to also maintain a Federal pilot's license. The amendments would also update obsolete provisions of the Commission's regulations and make the Commission's regulations consistent with those of Delaware, whose pilots are also licensed to pilot vessels on the Delaware River.**

(8) State the statutory authority for the regulation. Include specific statutory citation.

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

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

**No, the regulation is not mandated by any Federal or State law, court order or Federal regulation, but it brings the current State regulations into conformity with Federal regulations.**

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

**The proposed rulemaking would make it consistent with the current State regulation at § 405.7(c)(3) for a sixth-class pilot to have acquired a Federal pilot's license and with the current practice in place for all licensed pilots in this Commonwealth to hold a Federal license. In addition, the amendments would make the regulations consistent with those of Delaware and would amend the regulations to conform to current practices for State-licensed pilots to hold a Federal pilot's license in other northeastern and coastal states as well. Under the current Federal and State regulations, registered vessels engaged in foreign trade under foreign flags must employ a State-licensed pilot to traverse the Delaware River, and enrolled domestic vessels under the United States flag engaged in coastal trade (along the Atlantic seacoast and Gulf of Mexico) must employ a Federally-licensed pilot. Thus, having a Federal license gives a pilot greater flexibility in the vessels that a pilot is able to command. The past custom and practice of the Pilots' Association for the Bay and River Delaware, to which all Pennsylvania and Delaware licensed pilots belong as members, requires pilots to have both Federal and State pilot licenses. Therefore, this regulation also recognizes the current practice of licensed pilots in this Commonwealth.**

**The proposed amendments to § 405.7(a)(3) would require pilots to use the current Coast Guard's Merchant Mariner Credential Medical Evaluation Report (medical report), which is nine pages of detailed medical questions, requirements and examination procedures in contrast to the current physician's statement required by the Commission. Because the United States Coast Guard requirements for a physical examination are stricter and more detailed than the current requirements, the rulemaking protects the public health, safety and the environment by ensuring that pilots are medically fit for duty. Pennsylvania licensed pilots command many vessels, including oil tankers, up and down the Delaware River, so having pilots medically fit for duty protects the environment in and along the Delaware River and the beaches along the coast of the Atlantic Ocean. The United States Coast Guard medical report's specific requirements also reduce the subjectivity of the physical and medical evaluation process and promote more consistent evaluations, thereby resulting in a fairer process for all 41 pilots licensed in this Commonwealth. Another amendment in the regulation requires pilots to have their medical exam within 120 days (4 months) of their annual license renewal instead of the current 6 month requirement, thereby making the medical report more current and protecting public health and safety, as well as making the timing of the medical exam consistent with that in Delaware.**

**Finally, the amendments would update obsolete provisions of the Commission's regulations.**

(11) 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 regulations.

**This rulemaking would not be more stringent and would not conflict with any Federal requirements. In fact, it would follow the Federal standards.**

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

**This rulemaking requiring licensed pilots in this Commonwealth to hold and maintain a Federal pilot's license would not put Pennsylvania at a competitive disadvantage because it would make the regulations in Pennsylvania consistent with the regulations of the U.S. Coast Guard, Delaware (whose pilots are also licensed to pilot vessels on the Delaware River) and other states with similar State commissions (including the eastern states of Connecticut, Maine, New Hampshire, New Jersey, New York and Virginia). In fact, all 24 coastal states require all State-licensed pilots to hold a Federal pilot's license, either by statute, regulation or local pilot association rule or practice.**

**With respect to requiring licensed pilots to take a course in Bridge Resource Management (BRM), Delaware is most like Pennsylvania in that it also requires pilots to attend and complete a BRM course at least once every 5 years. The course must be recommended and approved by the Board of Pilot Commissioners or the American Pilots Association. (In Pennsylvania, the Commission approves all continuing education courses.) Maine requires applicants to submit proof of BRM for pilots' certification. Similarly in New Hampshire, the requirements for pilot appointment or reappointment state that a BRM certificate from a course approved by the Coast Guard is mandatory. New Jersey is slightly different in that their commission will review the plans or training for pilots to assure that they provide for an appropriate level and schedule, which may include, but not be limited to, BRM, emergency ship handling and communications.**

**In summary, of the states listed above, three (DE, ME & NH) require their licensed pilots to take courses in BRM and one (NJ) requires their licensed pilots to take a course in one of several subjects, which may include a BRM course. Only one state (DE) specifies how often the BRM course must be taken, which, like Pennsylvania, is every 5 years. Requiring pilots to take the BRM course every 5 years will establish better public health and safety measures in Pennsylvania than in the other states mentioned above and equal to those in DE. Based on these regulations in other states, this regulation will not place Pennsylvania at a competitive disadvantage.**

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

**This rulemaking would not affect other regulations of the Commission or other State agencies.**

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

**The Commission has sought and received input from the Pilots' Association for the Bay and River Delaware (Pilots' Association), which is the association whose members are pilots licensed in both Pennsylvania and Delaware. The Commission has discussed these regulations at public meetings held on Nov. 18, 2010, May 5, 2011, November 17, 2011 and June 13, 2013, when officers and representatives of the Pilots' Association were present.**

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

**The only potential individuals who are directly affected by the regulation are the 41 pilots licensed by the Commission. As a matter of current practice, all of them hold Federal licenses, as do the 37 licensed pilots in Delaware. A sixth-class pilot is required by § 405.7(c)(3) to attain a Federal pilot's license prior to being licensed as a sixth-class pilot, so the impact of the regulation will be upon the 41 Pennsylvania licensed pilots of the fifth through the first classes. (When a pilot is initially licensed in Pennsylvania, he becomes a pilot of the sixth class and works his way up through the various classes of licensure each year to become a first-class pilot. At 55 P.S. § 42(a), a sixth-class pilot may pilot smaller vessels that draw only 27 feet of water or less, while pilots of the fifth through the first classes may pilot increasingly larger vessels. There is no limit on the depth of water that a first class pilot may command.) Although the licensed pilots must pay their own Federal license renewal fees of \$95 every 5 years, there is also a benefit for Federal licensure. The United States Coast Guard medical report's specific requirements for renewal of a Federal license also reduce the subjectivity of the physical and medical evaluation process and promote more consistent evaluations, thereby resulting in a fairer process for all 41 pilots licensed in this Commonwealth. Furthermore, as discussed in the answer to question 19, there is a cost savings associated with this regulation of \$5,248 per year for all 41 licensed Pennsylvania pilots.**

**Small businesses are defined by the U.S. Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to this industry, a small business in "navigation services to shipping" is one with \$7.0 million or less in total income annually. The Pilots' Association total annual income is over \$7.0 million, so it is not a small business for purposes of the Regulatory Review Act. The Pilots' Association does not pay or reimburse any of the licensure fees for its pilots.**

**Therefore, the Commission does not foresee any other individuals or groups being adversely affected by the rulemaking. For a description of those who are positively affected by this rulemaking, see the answers to questions 10, 17 and 18.**

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

**As noted above in question 15, 41 licensed pilots of the fifth through the first classes will be required to comply with this regulation.**

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

**The proposed rulemaking would make it consistent with the current regulation for a sixth-class pilot to have acquired a Federal pilot's license and with the current practice in place for all Pennsylvania licensed pilots to hold a Federal license. In addition, the amendments would make the regulations consistent with those of Delaware and would conform to current practices for State-licensed pilots to hold a Federal pilot's license in other northeastern and coastal states as well.**

**The proposed amendments would require pilots to use the United States Coast Guard's medical report, which is nine pages of detailed medical questions, requirements and examination procedures in contrast to the current physician's statement required by the Commission. The increased scrutiny provided in the Coast Guard's medical report requires pilots to undergo more rigorous health screening. As stated on the United States Coast Guard's Navigation and Vessel Inspection Circular (NVIC No. 04-08) on page three, section 5(b), the Coast Guard believes that its detailed and stricter medical standards are necessary because "service on vessels may be arduous and impose unique physical and medical demands on mariners. The public safety risks associated with the medical and physical conditions of mariners on vessels are important considerations for the safe operation of vessels." Because the United States Coast Guard medical requirements for a physical examination are stricter and more detailed than the Commission's current requirements, the final-form rulemaking protects the public health, safety and the environment by ensuring that pilots are medically fit for duty.**

**There is also a positive benefit for licensed pilots to be required to obtain a Federal license and use the United States Coast Guard's medical report. As stated in the NVIC on page two at section 4(c) & (d), the Coast Guard medical report's specific requirements also reduce the subjectivity of the physical and medical evaluation process and promote more consistent evaluations, thereby resulting in a fairer process for all 41 pilots licensed in this Commonwealth. Furthermore, as discussed in the answer to question 19, there is a cost savings for this regulation of \$5,248 per year for all 41 licensed Pennsylvania pilots.**

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The benefits noted above to the licensed pilots in this Commonwealth, as well as to the general public for protecting the public health, safety and the environment, far outweigh the minor costs to the pilots themselves for the cost of \$ 95 once every 5 years for renewing a Federal license. With 41 licensed pilots in the first through the fifth classes, the total cost to the regulated community is \$3,895 every 5 years. For the purposes of reporting amounts for question 23, it is assumed that because different pilots renew their Federal licenses in different years, the costs for all licensees is spread out over a 5-year period, and the annual amount is approximately \$779 per year. Furthermore, as discussed in the answer to question 19, there is a cost savings for this regulation of \$5,248 per year for all 41 licensed Pennsylvania pilots. From a purely fiscal viewpoint, this regulation provides greater savings than costs to the regulated community.

Considering the broader public health, safety and environmental issues implicit in a pilot's fitness for duty, the cost of a Federal license of \$779 a year upon the regulated community is very small when compared to the costs that would be required to clean up an oil spill on the Delaware River.

(19) 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. Explain how the dollar estimates were derived.

Because all licensed pilots in this Commonwealth currently hold a Federal license, as a practical matter, there are no costs to the regulated community for complying with this rulemaking. To renew a Federal pilot's license, there is an evaluation fee of \$45 and an issuance fee of \$50, for a total fee of \$95 every 5 years. With 41 licensed pilots in the first through the fifth classes, the total cost to the regulated community is \$3,895 every 5 years. (All licensed pilots must pay their own licensure fees and are not reimbursed by the Pilots' Association.) For the purposes of reporting amounts for question 23, it is assumed that because different pilots renew their Federal licenses in different years, the costs for all licensees is spread out over a 5-year period ( $\$3,895 \div 5 = \$779$ ), and the annual amount is \$779 per year for all 41 pilots in the regulated community.

There are also savings to the regulated community due to the change in the time frame for the completion of a Commission-approved course in bridge resource management (BRM) from 3 to 5 years of the date of application or renewal. The cost of the 2-day course approved by the Commission is \$960, and all licensed pilots must pay this amount and are not reimbursed by the Pilots' Association. ( $41 \text{ pilots} \times \$960 = \$39,360$  for each time all pilots take the BRM course.) To calculate the cost savings to pilots over the course of their careers, pilots can begin their careers as sixth-class pilots at age 25 to 35. (Pilots must have a college or maritime academy degree, many have maritime experience prior to their application, and to become a sixth-class pilot, an individual selected by the Commission must serve as an apprentice for either 3 or 4 years, depending on whether they have a third mate's license from the U.S. Coast Guard.) If one assumes that a new pilot's career lasts approximately 30 to 35 years, then once the regulation is promulgated, a pilot would need to take this \$960 course approximately 6 times during his career ( $6 \times \$960 = \$5,760$ ), for a total expenditure of \$5,760. If the pilot had been required to take the course every 3 years instead of every 5 years, then the pilot would have been required to take the course approximately 10 times during his career, for a total expenditure of \$9,600. This change would result in a cost savings of \$3,840 to each pilot during the course of his career or a total savings of \$157,440 for all 41 licensed Pennsylvania pilots during the course of their careers.

However, not all of the 41 licensed pilots are beginning their career. Based on the Commission's licensee records, the average age of Pennsylvania's 41 licensed pilots is 44 years old. On the average, the 41 licensed pilots are approximately halfway through their careers ( $\$157,440 \div 2 = \$78,720$ ), and the cost savings to the entire regulated community would be approximately \$78,720 over the remaining span of their careers for a period of 15 years. For the purposes of reporting the amount saved by the regulated community in question 23 ( $\$78,720 \div 15 = \$5,248$ ), the savings would be approximately \$5,248 per year for all 41 licensed pilots in the regulated community.

Therefore, this regulation provides greater annual savings of \$5,248 than costs of \$779 to the regulated community. The annual net savings to all 41 pilots is thus \$4,469.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

**There are no costs or savings to local governments associated with compliance with the rulemaking.**

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

**There are no costs or savings to the State government associated with compliance with the rulemaking.**

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

**Once this regulation is promulgated, all pilots licensed in this Commonwealth must use the current medical report form of the United States Coast Guard, the Merchant Mariner Credential Medical Evaluation Report, which is nine pages of detailed medical questions, requirements and examination procedures, in contrast to the current physician's statement now required by the Commission. Because the United States Coast Guard already makes this form available, it would not require additional paperwork for the Commission to print it. Furthermore, because all 41 licensed pilots currently hold an active Federal license, this is not a new requirement, and most licensed pilots already submit the United State Coast Guard's medical report with their license renewal information.**

(23) 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 Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	\$5,248	\$5,248	\$5,248	\$5,248	\$5,248	\$5,248
Local Government						
State Government						
<b>Total Savings</b>	<b>\$5,248</b>	<b>\$5,248</b>	<b>\$5,248</b>	<b>\$5,248</b>	<b>\$5,248</b>	<b>\$5,248</b>
<b>COSTS:</b>						
Regulated Community	\$779	\$779	\$779	\$779	\$779	\$779
Local Government						
State Government						
<b>Total Costs</b>	<b>\$779</b>	<b>\$779</b>	<b>\$779</b>	<b>\$779</b>	<b>\$779</b>	<b>\$779</b>
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Navigation Commission for the Delaware River and Its Navigable Tributaries	\$13,207.37	\$10,899.08	\$14,917.20	\$15,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.



**As noted in the answer to question 15, because the Pilots' Association is not classified as a small business, and because the regulation results in greater savings than costs to the regulated community, no economic impact statement was developed.**

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

**Because all licensed pilots in this Commonwealth currently have a Federal license, there was no need to develop any special provisions to meet the particular needs of affected groups or persons.**

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

**Because all licensed pilots in this Commonwealth currently have a Federal license, the Commission did not consider any alternative regulatory provisions.**

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

**As noted in the answer to questions 15 and 24, because the Pilots' Association is not classified as a small business, and because the regulation results in greater savings than costs to the regulated community, the Commission did not consider the regulatory alternatives set forth above. All licensed pilots already hold a Federal pilot's license; most already submit the more detailed Federal medical report form of the United States Coast Guard, the Merchant Mariner Credential Medical Evaluation Report, when renewing their license; and the Commission is already establishing less stringent requirements by reducing the frequency of the required bridge resource management course from every 3 years to every 5 years.**

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

**This rulemaking is not based upon any scientific data, studies or references.**

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must have received public comments: **May 6, 2013**
- B. The date or dates on which public meetings or hearings were held: **Nov. 18, 2010, May 5, 2011, November 17, 2011 and June 13, 2013.**
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Fall 2013.**
- D. The expected effective date of the final-form regulation: **Upon publication as a final-form rulemaking.**
- E. The date by which compliance with the final-form regulation will be required: **Upon publication as a final-form rulemaking.**
- F. The date by which required permits, licenses or other approvals must be obtained: **All pilots renew their licenses annually by May 1 of each calendar year. All pilots renew their Federal licenses every 5 years.**

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

**The Commission continuously reviews its regulations at its scheduled meetings held twice a year.**

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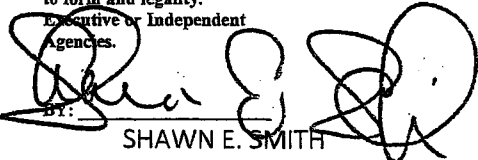
Copy below is hereby approved as to form and legality. Attorney General

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BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

Navigation Commission for the Delaware River and Its Navigable Tributaries  
(AGENCY)

BY:   
SHAWN E. SMITH

DOCUMENT/FISCAL NOTE NO. 16A-663

OCT 29 2013

DATE OF APPROVAL

DATE OF ADOPTION: \_\_\_\_\_

DATE OF APPROVAL

BY: Carol Aichele  
Carol Aichele

(Executive Deputy General Counsel  
Strike inapplicable title)

TITLE: 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 day after  
submission.

NOTICE OF FINAL RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
NAVIGATION COMMISSION FOR THE DELAWARE RIVER  
AND ITS NAVIGABLE TRIBUTARIES  
TITLE 4, PART XIII, CHAPTER 405  
GENERAL REVISIONS

The Navigation Commission for the Delaware River and its Navigable Tributaries (Commission) hereby amends §§ 405.7, 405.8 and 405.12 (relating to qualifications for license; physical examination qualifications; and renewal of license) and adds a new § 405.36 (relating to Federal license) to read as set forth in Annex A.

### **Effective Date**

The regulation is effective upon final-form publication in the *Pennsylvania Bulletin*.

### **Statutory Authority**

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

### **Background and Purpose**

The main purpose of this rulemaking is to require all applicants for a pilot's license in this Commonwealth, as well as all licensed pilots who renew their licenses, to hold and maintain a Federal pilot's license. One of the major purposes of this proposed rulemaking is to bring consistency to different sections of the Commission's regulations. Currently, § 405.7(c)(3) requires an apprentice to have acquired a Federal pilot's license before obtaining a sixth-class license in this Commonwealth, which is the initial license for a State pilot. The rulemaking requires all licensed pilots in this Commonwealth (who work their way up through the six licensure classes commanding vessels of increasing depth) to maintain a Federal pilot's license, thereby making it consistent with the current requirement for sixth-class pilots.

The rulemaking also makes the Commission's regulations consistent with the regulations of Delaware (whose pilots are also licensed to pilot vessels on the Delaware River) and other states with similar State commissions (including the northeastern states of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey and New York). In fact, all 24 coastal states require all State-licensed pilots to hold a Federal pilot's license, either by statute, regulation or local pilot association rule or practice. Likewise, all licensed pilots in this Commonwealth also hold a Federal pilot's license for three reasons. First, under the current Federal and State regulations, registered vessels engaged in foreign trade under foreign flags must employ a State-licensed pilot to traverse the Delaware River, and enrolled domestic vessels under the United States flag engaged in coastal trade (along the Atlantic seacoast and Gulf of Mexico) must employ a Federally-licensed pilot. Thus, having a Federal license gives a pilot greater flexibility in the vessels that a pilot is able to command. Second, sixth-class pilots who are required to hold a Federal license generally continue to maintain their Federal license. Third, the past and current custom and practice of the Pilots' Association for the Bay and River Delaware, to which all Pennsylvania and Delaware licensed pilots belong as members, require pilots to have both Federal and State pilot licenses. Therefore, this regulation also recognizes the current practice of licensed pilots in this Commonwealth.

Another main reason why the Commission is adopting this regulation is that it would protect the public health and safety. Pilots who command vessels, including oil tankers, traversing the Delaware River must be ever vigilant in their duties and maintain high physical standards. A marine accident can adversely affect the environment of not only the Delaware River but also the Chesapeake Bay, thereby affecting the commerce of the region as well as the Commonwealth. The amendments to §§ 405.7(a)(3) and 405.8(3) (relating to qualifications for license; physical examination qualifications) would require apprentices and pilots to use the current Coast Guard's Merchant Mariner Credential Medical Evaluation Report (medical report), which is nine pages of detailed medical questions, requirements and examination procedures in contrast to the current physician's statement required by the Commission. The increased scrutiny provided in the Coast Guard's medical report will promote public health and safety by requiring pilots to undergo rigorous health screening. Another amendment to the regulations at § 405.7(a)(3) increases public health and safety by providing that a pilot's physical examination must now occur within 120 days (4 months) of the pilot's annual renewal of the pilot's license, instead of 6 months.

The amendments are also needed to update obsolete provisions of the Commission's regulations. The United States Coast Guard has changed the names of its reports, and the regulations use the new names of the reports as well as provide for possible future name changes by referring to successor forms of the reports. Furthermore, the current requirement at § 405.7(b)(2) for an interview for a first-time applicant for a first-class pilot's license requires the applicant to appear before the Commission for a personal interview. Such an interview is no longer necessary due to an initial interview when an individual applies to be an apprentice, as well as due to the training and examinations that occur while an individual is an apprentice. Once an apprentice becomes a sixth-class pilot, the pilot obtains practical experience on increasingly larger vessels while moving progressively each year through the six classes of licensure. The Commission is also amending § 405.7(a)(6) to change the time frame for the completion of a Commission-approved course in bridge resource management (BRM) from 3 to 5 years of the date of application or renewal, to correspond to the Delaware regulations (24 Del. Admin. Code § 1000-5.7). According to the American Pilots' Association (APA), this subject matter does not change often enough to require a new course every 3 years.

### **Summary of Comments and the Board's Response**

The Commission published notice of proposed rulemaking in the *Pennsylvania Bulletin* on April 6, 2013 at 43 Pa. B. 1850, followed by 30 days of public comment. The Commission did not receive any comments from the public, the Senate Consumer Protection and Professional Licensure Committee (SC/PLC) or the House Professional Licensure Committee (HPLC).

The Independent Regulatory Review Commission (IRRC) submitted 2 comments on June 5, 2013. First, IRRC suggested for clarity that the Commission delete the date that the continuing education requirements at § 405.12(b) became effective, which occurred on July 6, 2004. IRRC noted that the Commission had deleted the same date at § 405.7(b)(1) because the date has already passed. Therefore, the Commission deleted this date at § 405.12(b) to address IRRC's comment.

IRRC's second comment, which was also made for clarity, noted that § 405.36(b) provides that if a pilot's Federal license is suspended, revoked or surrendered (i.e., inactive), then the Commission may revoke, suspend, limit or otherwise restrict the pilot's State license, but the Commission's action is discretionary, not mandatory. IRRC asked the Commission to explain how § 405.36(b) is consistent with the provision at § 405.7(a)(10), which requires an applicant for a pilot's license to hold and maintain an active Federal pilot's license and § 405.12(a)(1), which requires an applicant renewing a pilot's license to satisfy the requirements in § 405.7(a)(10).

As IRRC correctly noted in its second comment, the Administrative Agency Law (at 2 Pa.C.S. § 504), requires all State agencies, including the Commission, to provide notice and an opportunity for a hearing before taking any actions against a pilot's State license. In addition, section 31(c) of the act (55 P.S. § 72(c)), also contains this requirement. Thus, a pilot has a separate property right in both the pilot's State and Federal license.

In order to preserve a pilot's property right in his State license, follow the requirements of law and address IRRC's request for consistency with the regulatory requirements to hold and maintain a Federal license, the Commission changed the language at § 405.7(a)(10). Previously, this section had stated that an applicant shall "hold and maintain an active Federal first class pilot's license and endorsement for the routes to be traversed, unless **waived** by the Commission." (Emphasis added.) In contrast, this final rulemaking states at paragraph (10) that an applicant shall "hold and maintain an active Federal first class pilot's license and endorsement for the routes to be traversed, unless **otherwise ordered** by the Commission." (Emphasis added.) Making this change uses more precise language reflecting the possible actions that the Commission may take. This new language means that, after notice and a hearing, the Commission may order that a pilot could retain his State license or the Commission may issue other orders taking actions against a State pilot while the Federal license is inactive, as described in greater detail in the next section. Clarifying this exception would make §§ 405.7(10), 405.12(a)(1) and 405.36(b) consistent as IRRC suggests.

### **Description of the Amendments to the Final-form Regulations**

As noted above, the Commission made amendments to the final-form rulemaking to address both of the comments made by IRRC. At § 405.12(b), the Commission deleted the last sentence which contained the date of July 6, 2004 because that date occurred in the past and is no longer relevant.

At § 405.7(10), the Commission added an exception "unless otherwise ordered by the Commission" to the general requirement that an applicant for a State license also hold and maintain a Federal first class pilot's license. By doing so, the Commission would make this section and § 405.12(a)(1), which requires an applicant renewing a pilot's license to satisfy the requirement in § 405.7(a)(10), consistent with the requirement at § 405.36(b), which provides that if a pilot's Federal license is suspended, revoked or surrendered (i.e., inactive), then the Commission may, in its discretion, revoke, suspend, limit or otherwise restrict the pilot's State license.

If a pilot's Federal license is suspended, revoked or surrendered, the Commission would follow the requirements of the Administrative Agency Law at 2 Pa.C.S. § 504 and the act at 55 P.S. § 72(c) and provide notice and an opportunity for a hearing before taking any disciplinary action against the pilot's State license. If a pilot chooses to have a hearing, then the Commission can sit as the adjudicator to hear the facts and render a determination as to culpability and the degree of penalty, if any, to be assessed if a finding is made that the pilot has violated the law or regulations.

The Commission may issue any one of three types of orders pertaining to the case before it. First, the Commission may issue an order with no penalty regarding the pilot's State license if, in its opinion, the Commission determines that the facts support a decision that no violation of law or incapacity, misconduct or negligence was involved. In contrast, the Commission may determine to take some form of discipline against the pilot's State license and issue an Adjudication and Order. Such an order may revoke or suspend a pilot's license, impose a civil penalty, restrict the pilot's license privileges, or require the pilot to undertake remedial studies or training, participate in a rehabilitation program or function only under supervision for a period of time. As a third option, cases before the Commission may also be settled through a Consent Agreement and Order. Terms of a settlement are negotiated between the prosecutor for the Department and the pilot. If a Consent Agreement is reached, the pilot agrees to forego a hearing on the matter and abide by the Commission's Order. Terms of a Consent Agreement and Order may include any of the actions indicated above that may be taken through an Adjudication and Order. With these amendments, the Commission believes these requirements are now consistent.

### **Fiscal Impact and Paperwork Requirements**

The final-form regulation should not have any fiscal impact on the Commonwealth, the general public or political subdivisions. As noted in the Regulatory Analysis Form (RAF), there is a cost savings to the Commission's licensees. Although all licensed pilots in this Commonwealth already have a Federal license by current practice, the cost of a Federal license is \$95 every 5 years, for a cost of \$779 per year for all 41 licensed pilots of the first through the fifth classes. This cost is more than offset by the cost savings to all licensed pilots, who will be required to take the course in bridge resource management every 5 years, instead of every 3 years. The cost of this 2-day course is \$960 per pilot. The estimated annual cost savings to the regulated community resulting from reducing the frequency of the required course is \$5,248. Subtracting the costs of \$779 from the savings of \$5,248, this will result in a net cost savings of \$4,469 every year for the regulated community of all 41 Pennsylvania licensed pilots.

The regulation does not create additional paperwork for the Commission, the Commission's licensees or the general public. As noted above, the regulation confirms the present practices of the Commission's licensees.

### **Sunset Date**

The Commission continuously monitors its regulations. Therefore, no sunset date has been assigned.

### **Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 21, 2013, the Commission submitted a copy of this proposed rulemaking, published at 43 Pa.B. 1850 (April 6, 2013), and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SC/PLC) and the House Professional Licensure Committee (HPLC) for review and comment.

The Commission did not receive any public comments or any comments from the SC/PLC or the HPLC. In preparing the final-form rulemaking, the Commission considered the comments received from IRRC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on \_\_\_\_\_, 2013, the final-form rulemaking was approved by HPLC. On \_\_\_\_\_, 2013, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, 2013, and approved the final-form rulemaking.

### **Contact Person**

Further information may be obtained by contacting Barbara Dupler, Commission Administrator, Pennsylvania Navigation Commission, 302 North Office Building, Harrisburg, PA 17120 or by email to [bdupler@pa.gov](mailto:bdupler@pa.gov).

### **Findings**

The Commission finds that:

1. Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240), (45 P.S. §§ 1201 – 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 – 7.2.
2. A public comment period was provided as required by law and no public comments were received. The Commission considered and addressed IRRC's comments.
3. The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 43 Pa. B. 1850.
4. This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.



**Order**

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

- (A) The regulations of the Commission at 4 Pa. Code §§ 405.7, 405.8 and 405.12 are amended and § 4 Pa. Code 405.36 is added to read 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 immediately upon publication in the *Pennsylvania Bulletin*.

Carol Aichele, Secretary of the Commonwealth  
Chairperson, Navigation Commission for the  
Delaware River and Its Navigable Tributaries

**ANNEX A**

**TITLE 4. ADMINISTRATION**

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

**CHAPTER 405. PILOTS AND PILOTAGE**

\* \* \* \* \*

**§ 405.7. Qualifications for license.**

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

\* \* \* \* \*

(3) Have passed a physical examination within [6 months] 120 days 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] apprentices and pilots shall submit the current or successor form of the "Merchant [Marine Personnel Physical Examination] Mariner Credential Medical Evaluation Report" of the United States Coast Guard. Physical examinations may also be ordered by the Commission for any pilot or applicant at any time 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 duties.

\* \* \* \* \*

(6) Have completed a Commission-approved course in bridge resource management within [3] 5 years of the date of application or renewal.

\* \* \* \* \*

- (9) Pay the required license fee, as specified in § 405.15 (relating to initial licensure and license renewal fee).
- (10) Hold and maintain an active Federal first-class pilot's license and endorsement for the routes to be traversed, unless waived OTHERWISE ORDERED by the Commission.
- (b) In addition to meeting the requirements of subsection (a), a first-time applicant for a first-class pilot's license shall[:
- (1) Have] 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 becomes effective July 6, 2004.
- (2) Have appeared before the Commission for a personal interview.]

**§ 405.8. Physical examination qualifications.**

The physical qualifications for a pilot or apprentice are as follows:

\* \* \* \* \*

- (3) 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] Mariner Credential Medical Evaluation Report" of the United States Coast Guard. A pilot shall report to the Commission

concerning the pilot's request for a waiver under 46 CFR § 10.215(g) (relating to medical and physical requirements) from the United States Coast Guard for any medical condition, as well as the results of a waiver request. The initial report to the Commission shall be made at the same time that the waiver request is made to the United States Coast Guard. A copy of the United States Coast Guard's decision on the waiver request shall be provided to the Commission within 5 business days of the pilot's receipt of the waiver decision.

\* \* \* \* \*

**§ 405.12. Renewal of license.**

- (a) 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) and (10) (relating to qualifications for license).
  - (2) Pay the required renewal fee, as specified in § 405.15 (relating to initial licensure and license renewal fee).
- (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 July 6, 2004.~~

(c) Failure to satisfy any of the requirements of § 405.7(a)(1) – (6), (8) and (10) may result in the license not being renewed by the Commission until receipt of documentation to assure compliance with the requirement in question.

\* \* \* \* \*

**§ 405.36. Federal license.**

(a) A pilot shall notify the Commission within 14 calendar days if the United States Coast Guard suspends or revokes a pilot's Federal license, or if a pilot voluntarily deposits or voluntarily surrenders his Federal license with the United States Coast Guard under 46 CFR § 5.201 – 5.205 (relating to deposit or surrender of Coast Guard credential or endorsement), thereby making the pilot's Federal license inactive.

(b) If the United States Coast Guard suspends, revokes, or accepts the voluntary deposit or voluntary surrender of the license of a Federal pilot, the Commission may, after notice and an opportunity for a hearing in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law), revoke, suspend, limit or otherwise restrict the pilot's state license.

\* \* \* \* \*

**Commentator's List for Reg. 16A-663**

There were no commentators for this regulation



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
**NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS  
NAVIGABLE TRIBUTARIES**  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649

November 6, 2013

The Honorable Silvan B. Lutkewitte, III, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
Navigation Commission for the Delaware River and its Navigable Tributaries  
16A-663

Dear Chairman Lutkewitte:

Enclosed is a copy of a final rulemaking package of the Navigation Commission for the Delaware River and its Navigable Tributaries pertaining to General Revisions.

The Navigation Commission will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Carol Aichele".

Carol Aichele  
Secretary of the Commonwealth

CA/LLB:rs

Enclosure

cc: Kathy J. Barley, Acting Commissioner  
Professional and Occupational Affairs  
Patricia Allen, Director of Policy, Department of State  
Steven V. Turner, Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Louis Lawrence Boyle, Counsel  
Navigation Commission for the Delaware River and its Navigable Tributaries  
Navigation Commission for the Delaware River and its Navigable Tributaries

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

**I.D. NUMBER:** 16A-663

**SUBJECT:** GENERAL REVISIONS

**AGENCY:** DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
NAVIGATION COMMISSION FOR THE DELAWARE RIVER AND ITS  
NAVIGABLE TRIBUTARIES

**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

2013 NOV -6 AM 11:24

RECEIVED  
IRRC

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
11/6/13	<i>Michelle Warren</i>	MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION &amp; PROFESSIONAL LICENSURE</i>
11/6/13	<i>May Walmer</i>	MAJORITY CHAIR <u>Robt. M. Tomlinson</u>
		MINORITY CHAIR _____
11/6/13	<i>K Cooper</i>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>