

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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IRRC RECEIVED

(All Comments submitted on this regulation will appear on IRRC'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

(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 Pennsylvania licensed pilots to also maintain a Federal pilot's license. The amendments would also update obsolete provisions of the Commission's regulations and make the Pennsylvania 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 (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 Pennsylvania licensed pilots 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.**

**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 in Pennsylvania. Because the United States Coast Guard Federal medical requirements for a physical examination are stricter and more detailed than the current state requirements, the proposed 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 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 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 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 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 state statute, state regulation or local pilot association rule or practice.**

(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 and November 17, 2011, when officers and representatives of the Pilot's 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 Pennsylvania licensed pilots. As a matter of current practice, all of them hold Federal licenses, as do the 37 licensed pilots in Delaware. One of the Pennsylvania licensed pilots is a sixth class pilot, who is required by 4 Pa.Code § 405.7(c)(3) to attain a Federal pilot's license prior to being licensed as a sixth class state pilot, so the impact of the regulation will be upon the 40 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 Pennsylvania licensed pilots must pay their own Federal license renewal fees of \$95 every 5 years, there is also a benefit for Federal licensure. The 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 for this regulation of \$5,248 per year for all 41 licensed Pennsylvania pilots.

Small businesses are defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, which provides that a small business is 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 under Act 76 of 2012. 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, 40 Pennsylvania 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 state 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 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.**

**The proposed amendments would require pilots to use the 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 in Pennsylvania. The increasing 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 Federal medical requirements for a physical examination are stricter and more detailed than the current state requirements, the proposed 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 Pennsylvania Pilots to be required to obtain a Federal license and use the 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 Pennsylvania licensed pilots 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 five years for renewing a Federal license. With 40 Pennsylvania licensed pilots in the first through the fifth classes, the total cost to the regulated community is \$ 3,800 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, then the costs for all licensees is spread out over a 5-year period, and the annual amount is approximately \$760 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 \$760 a year upon the regulated community is literally a mere drop in the bucket when compared to the billions of dollars that would be required to clean up an oil spill in 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 state licensed pilots 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. With 40 Pennsylvania licensed pilots in the first through the fifth classes, the total cost to the regulated community is \$ 3,800 every 5 years. (All Pennsylvania 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, then the costs for all licensees is spread out over a 5-year period, and the annual amount is approximately \$760 per year.

There are also cost savings to the regulated community due to this regulation. As explained in the Preamble, the Commission also proposes to amend § 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. The cost of the two-day course approved by the Commission is \$960, and all Pennsylvania licensed pilots must pay this amount and are not reimbursed by the Pilots' Association. 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.) Although all pilots must retire by the age of 70, as a requirement of the Pilots' Association, many retire in their sixties. If one assumes that a new pilot's career is for approximately 30 to 35 years, then once the regulation is promulgated, a pilot would need to take this \$960 course 6 times during his career, 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 for approximately 10 times during his career, for a total expenditure of \$ 9,600. This 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 Pennsylvania pilots are beginning their career. Based on the Commission's licensee records, the average age of Pennsylvania's 41 licensed pilots is 43 years old. On the average, the 41 licensed Pennsylvania pilots are approximately halfway through their careers, 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, the savings would be approximately \$5,248 per year for all 41 licensed Pennsylvania pilots in the regulated community.

**Therefore, this regulation provides greater savings than costs to the regulated community.**

(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 Pennsylvania must use the current Federal medical report form of the U.S. 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 in Pennsylvania. Because the Coast Guard already makes this form available, it would not require additional paperwork for the Commission to print it. Furthermore, because all 41 Pennsylvania licensed pilots currently hold an active Federal license, this is not a new requirement for Pennsylvania licensed pilots, and most Pennsylvania pilots already submit the 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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	\$5,248	\$5,248	\$5,248	\$5,248	\$5,248	\$5,248
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	\$5,248	\$5,248	\$5,248	\$5,248	\$5,248	\$5,248
<b>COSTS:</b>						
<b>Regulated Community</b>	\$760	\$760	\$760	\$760	\$760	\$760
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>	\$760	\$760	\$760	\$760	\$760	\$760
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<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	\$7,298.91	\$13,239.64	\$11,512.33	\$10,500.00

(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 under Act 76 of 2012 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 Pennsylvania licensed pilots 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 Pennsylvania licensed pilots 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 under Act 76 of 2012 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 U.S. Coast Guard, the Merchant Mariner Credential Medical Evaluation Report, when renewing their state 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: **Thirty days after publication in the *Pennsylvania Bulletin*.**
- B. The date or dates on which public meetings or hearings were held: **Nov. 18, 2010, May 5, 2011 and November 17, 2011.**
- 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 state 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.**

FACE SHEET  
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WITH THE LEGISLATIVE REFERENCE BUREAU

2013 MAR 21 AM 11:15

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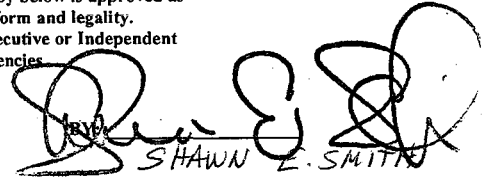
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Navigation Commission for the Delaware River and Its Navigable Tributaries  
(AGENCY)

  
SHAWN E. SMITH

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

MAR 05 2013

DOCUMENT/FISCAL NOTE NO. 16A-663

FEB 11 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 PROPOSED 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 Pennsylvania Navigation Commission for the Delaware River and Its Navigable Tributaries (Commission) proposes general revisions to update its regulations. The Commission proposes to amend §§ 405.7, 405.8 and 405.12 (relating to qualifications for license; physical examination qualifications; and renewal of license); and to adopt a new § 405.36 (relating to Federal license), to read as set forth in Annex A.

### **Effective Date**

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

### **Statutory Authority**

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

### **Background and Purpose**

In the United States, there is a concurrent system of licensing for pilots established by Federal and state law. The history of pilot regulation in the United States dates back to when the colonies had exclusive power over pilot regulation, including when vessels entering their waters were required to employ a pilot. With the expansion of the maritime industry in the United States, the Federal government eventually adopted uniform regulations to promote safe passage of vessels along the coast and through bays, rivers, harbors, and ports.

In promulgating the Federal regulations, however, the Federal government essentially determined that the existing state regulations efficiently served this purpose for inland waterways (rivers, bays, harbors and ports). Under the current Federal and state regulations, registered vessels engaged in foreign trade under foreign flags must employ a state-licensed pilot, and enrolled domestic vessels under the United States flag engaged in coastal trade must employ a Federally-licensed pilot. If a pilot has both a state and Federal license, that pilot can then pilot either type of vessel, although there are significantly fewer United States flag vessels. Federal pilot licensing law essentially permits the states to adopt their own regulations concerning the licensing of pilots, but any Federal law concerning pilotage will preempt a conflicting state law under the Supremacy Clause of the U.S. Constitution (U.S. Const., art. VI, cl. 2).

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 Pennsylvania. The proposed rulemaking would require all Pennsylvania licensed pilots to maintain a Federal pilot's license, thereby making it consistent with this current requirement. 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 for a vessel that a first class pilot may command.

Currently, all Pennsylvania licensed pilots also hold a Federal pilot's license, due not only to the regulation for sixth class pilots, but also due to 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. Therefore, this proposed regulation also recognizes the current practice of Pennsylvania pilots. In addition, when Pennsylvania pilots renew their license annually, they submit a copy of their Federal pilot's license to the Commission because § 405.12(a)(1) currently requires an applicant for renewal of a state license to have satisfied the requirements of § 405.7(a)(1) – (6) and (8) (relating to qualifications for license). One of the qualifications for license at § 405.7(a)(5) is to have been qualified as a radar observer, as evidenced by either (i) a radar observer endorsement on a current Federal pilot's license or (ii) a certificate issued by a Coast Guard-approved authority reflecting that the certificate holder satisfactorily completed a course of instruction for radar observers, within 5 years of the date of application. Because all Pennsylvania pilots also hold a Federal pilot's license, most Pennsylvania pilots submit a copy of their Federal pilot's license (with a radar observer endorsement) to satisfy the requirements of §§ 405.12(a)(1) and 405.7(a)(5).

The amendments are also needed to update obsolete provisions of the Commission's regulations. The United State Coast Guard has changed the names of its reports, and the regulations refer to 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, he obtains practical experience on increasingly larger vessels as he moves progressively each year through the six classes of licensure in Pennsylvania.

Finally, these proposed amendments are needed to 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 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 state statute, state regulation or local pilot association rule or practice. For a discussion of the history and requirements of both Federal and state pilotage regulation, see Paul G. Kirchner and Clayton L. Diamond, "Unique Institutions, Indispensable Cogs, and Hoary Figures: Understanding Pilotage Regulation in the United States," U.S.F. Maritime Law Journal, Vol. 23, No. 1, 168, 199 (2010-11).

### **Description of Proposed Amendments**

*§ 405.7. Qualifications for license.*

The Commission proposes to amend § 405.7(a)(3) to enhance public safety and to bring consistency with the regulations in Delaware, whose pilots are also licensed to pilot vessels on the Delaware River. The proposed regulation at § 405.7(a)(3) will require apprentices and renewing pilots (under §405.12(a)(1)) to have a physical exam within 120 days (4 months) of the date of application or renewal. The Commission proposes this change from 6 months to 4 months to be consistent with regulations of the Delaware Board of Pilot Commissioners, which require a physical exam within 120 days (24 Del. Admin. Code § 1000-6.0), and to provide for increased public safety.

Proposed amendments to § 405.7(a)(3) 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 in Pennsylvania. The increasing scrutiny provided in the Coast Guard's medical report will promote public health and safety by requiring pilots to undergo more rigorous health screening. This amendment also brings the Pennsylvania regulation into conformity with Delaware, which already requires pilots who renew their license to use the Coast Guard's medical report. Because all Pennsylvania licensed pilots also hold an active Federal pilot's license, most Pennsylvania pilots already submit the Coast Guard's medical report with their license renewal information. Finally, § 405.7(a)(3) would be amended to update the name of the Coast Guard's medical report to its current name (the Merchant Mariner Credential Medical Evaluation Report). The Commission proposes to retain the reference to the "current or successor form" in the event of further changes to the name of the Coast Guard's medical report.

The Commission also proposes to amend § 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. The APA recommends that the renewal courses focus on developments in the BRM field over the preceding 5 years as a result of accidents, research, developments in technology and information resources and regulatory changes. Furthermore, this change is consistent with the requirement at § 405.7(a)(5) requiring a licensee to have been qualified as a radar observer by completing a course of instruction for radar observers within 5 years of the date of application or renewal. The current BRM course approved by the Commission is a two-day course and includes the following topics: an overview of BRM, situational awareness, communications, risk management, regulatory requirements, best practices in specific areas, an examination of recent accidents, new practices and technology, and studies dealing with BRM.

At § 405.7(a)(10), the Commission proposes to require all Pennsylvania pilots to hold an active Federal license before initially acquiring a Pennsylvania license and before renewing a Pennsylvania pilot's license, as Delaware requires. As noted above, the Coast Guard's requirements for its current medical report are much more detailed and stricter than the current Pennsylvania medical examination. As stated on the United States Coast Guard's Navigation and Vessel Inspection Circular (NVIC No. 04-08) on page two, at section 4(c) & (d), the Coast Guard medical report's specific requirements reduce the subjectivity of the physical and medical

evaluation process and promote more consistent evaluations, thereby resulting in a fairer process for all pilots. As stated in the NVIC 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 Federal medical requirements for a physical examination are stricter and more detailed than the current state requirements, the proposed rulemaking protects the public health, safety and the environment by ensuring that pilots are medically fit for duty. Pennsylvania licensed pilots steer 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.

Currently, § 405.7(b)(2) requires a first-time applicant for a first-class pilot’s license to appear before the Commission for a personal interview. The Commission proposes to eliminate this requirement. When applicants for an apprenticeship are selected, they appear before the Apprentice Committee of the Commission, comprised of three members of the Commission. Apprentices receive extensive training and must pass an intensive examination to become a sixth-class pilot. Individual pilots also obtain practical experience on smaller vessels as they move from sixth-class pilots up through the pilotage classes each year from sixth to eventually first-class pilots. All pilots are required to pilot at least 52 vessels a year in order to renew a license. Therefore, the Commission has determined that an interview for a first-time applicant for a first-class license is no longer necessary and should be removed.

The remaining changes at § 405.7(b) are editorial. Also, because the date of July 6, 2004, referenced in § 405.7(b)(1), has already passed, it is removed from § 405.7(b).

*§ 405.8. Physical examination qualifications.*

The Commission proposes to amend § 405.8 to change the name of the Coast Guard’s medical report to its current name, or the successor form, if the name changes in the future. The Commission is also proposing a requirement that each pilot report to the Commission a pilot’s request for waiver from the U.S. Coast Guard for any medical condition and report in 5 business days to the Commission the Coast Guard’s decision on any such waiver. The new language is consistent with Delaware’s regulation at 24 Del. Admin. Code § 1000-6.0. This requirement would keep the Commission apprised of any changes in the medical status of a pilot licensed in Pennsylvania.

*§ 405.12. Renewal of license.*

At § 405.12(a)(1), the Commission proposes to update the cross reference to § 405.7(a)(1) – (6), (8) and (10), thereby requiring that these requirements for apprentices who seek a Pennsylvania license for the first time also apply to licensed pilots seeking license renewal, including the new requirement to hold and maintain an active Federal license.

The Commission proposes to add a new subsection (c), to provide notice that failure to satisfy the requirements of § 405.7(a)(1) – (6), (8) and (10) may result in the pilot’s Pennsylvania license not being renewed until receipt of documentation necessary to assure compliance with the requirement in question. The necessary documentation will vary depending on which requirement has not been satisfied. This amendment is necessary to clarify that a Pennsylvania pilot’s license may result in the license not being renewed, at the Commission’s discretion, if the pilot does not hold an active Federal license at the time of license renewal.

*§ 405.36. Federal license.*

The Commission proposes to create a new section for requirements pertaining to a Federal license. In subsection (a), the Commission requires disclosure within 14 calendar days if the United States Coast Guard suspends, revokes or accepts the voluntary deposit or voluntary surrender of a pilot’s Federal license. Under 46 CFR § 5.201 a pilot may voluntarily deposit a Federal license in the event of a physical or mental condition or impairment pursuant to a “voluntary deposit agreement.” Under a voluntary deposit agreement, a pilot places his Federal license in inactive status and may not perform any duties on a merchant vessel of the United States during the time that the Federal license is inactive. A pilot may request the return of a voluntarily deposited license at any time, provided he can demonstrate a satisfactory rehabilitation or cure of the condition that led to the voluntary deposit. A pilot may elect to voluntarily surrender a Federal license under 46 CFR § 5.203 in lieu of appearing at a disciplinary hearing. However, a voluntary surrender is the equivalent of a revocation, and the pilot must apply for issuance of a new credential under 46 CFR §§ 5.901 -5.905.

The new disclosure requirements will keep the Commission apprised of any changes in the status of a pilot’s Federal license. This language is also consistent with practices among the other professional and occupational licensing boards within the Department of State. Eighteen of the 29 licensing boards and commissions in the Bureau of Professional and Occupational Affairs (BPOA) have some form of self reporting in their licensing statutes for any licenses that are inactive or any disciplinary action taken against licensees in other states.

At § 405.36 (b), the Commission proposes language to make it clear that the Commission will provide a state pilot with notice and an opportunity for a hearing if the pilot’s Federal license is suspended, revoked, voluntarily surrendered or voluntarily deposited. This proposed regulation is based on the statutory requirement at 55 P.S. § 72(c), which requires notice and an opportunity to be heard before a pilot’s state license is restricted, suspended or revoked.

**Fiscal Impact**

The proposed 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 Pennsylvania licensed pilots have a Federal license by current practice, the cost of a Federal license is \$95 every five years, for a cost of \$760 per year for all 40 licensed pilots of the first through the fifth classes. This cost is more than offset by the cost savings to all Pennsylvania 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 two-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 \$760 from the savings of \$5,248, this will result in a net cost savings of \$4,488 every year for the regulated community of Pennsylvania licensed pilots.

### **Paperwork Requirements**

The proposed 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 regulation 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 and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. Comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly, and the Governor of comments, recommendations or objections raised.

### **Public Comment**

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to 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), within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-663, Navigation Commission General Revisions, when submitting comments.

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, apprentices and pilots [may] shall submit the current or successor form of the "Merchant [Marine Personnel Physical Examination] Mariner Credential Medical Evaluation Report" of the United State 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.

\* \* \* \* \*

(10) Hold and maintain an active Federal first class pilot's license and endorsement for the routes to be traversed, unless waived 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 State Coast Guard. Each 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 any such waiver request.

The initial report to the Commission shall be made at the same time that the waiver request is made to the Coast Guard, and a copy of the 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).

\* \* \* \* \*

- (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 the Administrative Agency Law (2 Pa.C.S. §§ 501—508 and 701—704), revoke, suspend, limit or otherwise restrict the pilot’s state license.

\* \* \* \* \*



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  
(717) 787-6458

March 21, 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: Proposed Regulation  
Navigation Commission for the Delaware River and Its Navigable Tributaries  
~~16A-633- General Revisions~~  
663 RD

Dear Chairman Lutkewitte:

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

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

Sincerely,

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

CA/llb:ld  
Enclosure

cc: Katie True, Commissioner  
Bureau of Professional and Occupational Affairs  
Rebecca Oyler, 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 PROVISIONS

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

**TYPE OF REGULATION**

- Proposed Regulation
- 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 MAR 21 AM 11:15

RECEIVED  
IRPC

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/21/13	<u>Michelle Warren</u>	MAJORITY CHAIR <u>Julie Harhart</u>
		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3-21-13	<u>[Signature]</u>	MAJORITY CHAIR <u>Robt. M. Tomlinson</u>
3/21/13	<u>K Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
3-21-13	<u>Samata Hasan</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)