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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 856
PUBLIC UTILITY COMMISSION
OREGON BOARD OF MARITIME PILOTS

FILED
08/12/2020 9:32 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendments to 856-016-0001(4)&(5), 856-016-0010(9), and 856-025-0030.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2020 3:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S):

Provisions for allowing waiver of certain annual renewal requirements are needed in the event of state and national emergencies. Provisions for exempting certain small vessels from compulsory pilotage on the Columbia and Willamette Rivers are needed, because the service is not necessary for every vessel. This is a second notice to correct language in 856-025-0030.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Rules Committee Meeting Notes and Recommendation to Board 7/23/2020; Minutes #543 - 8/10/2020.

FISCAL AND ECONOMIC IMPACT:

Removes cost to certain small vessels by not requiring pilotage services.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The Board has no authority over any entity other than its licensees.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Board has no authority over any entity other than its licensees.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

This is part of an ongoing rule review by the Board's standing Rules Committee and Board counsel.

RULES PROPOSED:

856-016-0001, 856-016-0010, 856-025-0030

AMEND: 856-016-0001

RULE SUMMARY: Identifies circumstances under which waivers will be granted for completing professional development requirements for license renewal.

CHANGES TO RULE:

856-016-0001

Continuing Professional Development and Safety Training ¶¶

(1) All applications for renewal of an unlimited license after January 1, 2012 shall, within the sixty-three (63) months preceding the expiration date of their license, complete a minimum of 10 days of continuing professional development training, as provided in paragraphs (a) and (b) below.¶¶

(a) Each pilot shall satisfactorily complete a five (5) day manned model course at a Board approved manned model facility.¶¶

(b) Each pilot shall satisfactorily complete an additional five (5) days of course work, at least one day of which must be Bridge Resources Management for Pilots. All courses must be conducted at an accredited college, maritime academy, U.S. Coast Guard approved training facility or conducted by an expert in a field related to the subject matter of the course. All courses must cover one or more subject matter topics approved by the Board in advance of the course being taken. The Board shall maintain a list of approved topics, which may include, but are not limited to:¶¶

(A) Emergency Shiphandling for Pilots,¶¶

(B) Advanced Electronic Navigation Systems,¶¶

(C) Azipod Controls and Operations with Azipods,¶¶

(D) Fatigue, Sleep and Medications for Pilots,¶¶

(E) Legal Aspects of Pilotage, including State Statutes and Regulations for Pilots,¶¶

(F) Maritime Domain Awareness and Security for Pilots,¶¶

(G) Crisis Management and Media Response,¶¶

(H) Pilot Self-Assessment Simulation,¶¶

(I) Advanced Shiphandling Simulation,¶¶

(J) Operation with Tugs for Pilots,¶¶

(K) Radar Observer (credit limited to one day per reporting period),¶¶

(L) Bridge Resources Management for Pilots,¶¶

(M) Train the Trainer.¶¶

(2) In addition to satisfying the requirements set forth above, each pilot holding an unlimited license shall complete a minimum of one day of personal safety training during the 12-month period preceding the expiration date of their license. The Board shall maintain a list of pre-approved training, which may include, but are not limited to:¶¶

(a) CPR.¶¶

(b) Man Overboard (MOB).¶¶

(c) Cold Water Survival.¶¶

(d) Helicopter Dunker.¶¶

(e) Pilot Boat Drills.¶¶

(f) Rescue Systems.¶¶

(g) STCW - Basic Safety Training.¶¶

(3) Each pilot shall submit with every license renewal application, documentation of all requirements from

paragraphs (1) and (2) of this rule, which were obtained by that pilot subsequent to the pilot's most recent, prior renewal application or, for pilots submitting a first renewal application, obtained subsequent to being granted initial licensure. The documentation shall be submitted in a format approved by the Board.¶

(4) A pilot who is unable to complete the continued professional development requirements within the time allowed due to unexpected, emergency circumstances may request in writing a temporary waiver and the Board may, upon good cause shown, permit a license renewal for one year without the requirements being met, provided that all required professional development courses that were waived temporarily are completed by the applicant at the time application for renewal is made the following year. An application for renewal the following year shall be refused if the continuing professional development requirements temporarily waived have not been completed.¶

(5) National and State-Wide Emergencies. The Board may, upon its own motion, renew a license for one or more pilots who have not obtained all the continuing professional development requirements in sections (1) and (2) of this rule if:¶

(a) The Board determines a national or state-wide emergency existed during the year leading up to license renewal, which made continuing professional development courses unavailable or impracticable; and¶

(b) A pilot who receives this temporary waiver must complete all professional development requirements waived within 18 months of the temporary waiver being granted. Application for renewal 18 months or later after the temporary waiver was granted shall be refused if the continuing professional development requirements temporarily waived have not been completed.

Statutory/Other Authority: ORS 670, ORS 776

Statutes/Other Implemented: ORS 776.115, 670.310

AMEND: 856-016-0010

RULE SUMMARY: Describes circumstances for issuance of waivers for annual physicals and current federal licenses for state license renewal.

CHANGES TO RULE:

856-016-0010

Renewal of License ¶

- (1) Application for renewal of license shall be made on a form provided by the board, signed by the applicant, accompanied by the physical examination form provided by the board and presented to the administrator of the board at least thirty (30) days prior to expiration of license.¶
- (2) Every state-licensed pilots shall be required to have an annual physical examination by an Oregon or Washington licensed physician within eleven (11) months prior to the date the pilot is required to submit application for renewal of license to the board, the physical requirements for which are the same as for the original license as specified in OAR 856-015-0010(2) and (3), except for drug testing.¶
- (3) All state-licensed pilots shall, within six months prior to the expiration of their license, submit to a test indicating licensee is free of illegal substance abuse. Testing will be for the presence of Cocaine, Opiates, Marijuana (THC), Amphetamines and PCP (phencyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Code of Federal Regulations 46, CFR 7 16 (2009). Urine specimens are to be analyzed by a laboratory that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA); or provide proof to the board that licensee is participating in a US Coast Guard approved random drug testing program;¶
- (4) All applicants for renewal of licenses shall submit a photocopy of their currently applicable United States government license with radar endorsement issued by the United States Coast Guard.¶
- (5) All applicants for renewal of unlimited licenses shall provide certification of meeting the continuing professional development requirements specified in OAR 856-016-0001. Unless waived as provided below in this paragraph in OAR 856-856-016-0001, failure to comply with all requirements for renewal of license shall constitute the failure to submit a complete application for renewal and will result in the withholding of the renewal license. A pilot who is unable to complete the requirements within the time allowed due to unexpected, emergency circumstances may request in writing a waiver and the Board may, upon good cause shown, permit a license renewal for one year without the requirements being met, provided that all required certifications must be made by the applicant at the time application for renewal is made the following year.¶
- (6) Each license issued is valid for one year and only the unlimited state license may be renewed.¶
- (7) Notwithstanding subsection (4) of this section, if a pilot has submitted an application for renewal of the pilot's federal license at least 60 days prior to the expiration date of his federal license, but the United States Coast Guard has not completed its renewal process by the expiration date for the federal license and the pilot has, for that reason, no currently applicable federal license at the time of renewing his state license, then the board may issue a provisionally renewed state license. Any pilot to whom a provisionally renewed state license is issued must report to the board every 30 days regarding the status of the pilot's federal license renewal. If the United States Coast Guard completes its processing for the federal license but declines to renew the federal license, the board may treat the refusal to renew the federal license as a suspension or revocation of the federal license.¶
- (8) Notwithstanding subsection (5) of this section, a pilot who has submitted a timely and otherwise complete application for renewal of the pilot's state license but has not completed one or more of the requirements specified in 856-016-0001(1) may make a written request for a temporary waiver. If the pilot has never previously been granted a provisional renewal under this subsection, the pilot's license may be renewed, with the following stipulations:¶
 - (a) Any pilot to whom a provisionally renewed state license is issued under this subsection must, within 90 days of provisional renewal, demonstrate completion of all of the requirements specified in 856-016-0001(1) or permanently retire the pilot's state license without possibility of renewal.¶

(b) Failure within 90 days of provisional renewal to demonstrate completion of all of the requirements specified in 856-016-0001(1) or to permanently retire the pilot's state license, shall constitute a serious danger to public health and safety under ORS 183.430(2), and the Board may immediately suspend the pilot's license without hearing.¶

(9) State and National Emergencies:¶

(a) The Board may waive section (2) of this rule (annual physical) for one or more pilots if:¶

(A) The Board determines that, because of a state-wide or national emergency, obtaining a timely, annual physical examination is impossible or impracticable; and¶

(B) The pilot provides documentation to the Board at the time of renewal that the pilot has scheduled a physical examination, even if the scheduled date is not timely; and¶

(b) Section (4) of this rule (proof of valid federal license) is waived if:¶

(A) The United States Coast Guard has extended the expiration date of the Merchant Mariner Credentials required for state pilotage without processing the license for renewal; and¶

(B) A pilot provides documentation to the Board at the time of renewal that the pilot has completed and submitted to the United States Coast Guard an application to renew the required Merchant Mariner Credentials; but¶

(C) If the United States Coast Guard completes its processing for the federal license but declines to renew the federal license, the board may treat the refusal to renew the federal license as a suspension or revocation of the federal license.

Statutory/Other Authority: ORS 776, 670

Statutes/Other Implemented: ORS 776.115, 670.310

AMEND: 856-025-0030

RULE SUMMARY: Extends exemptions from compulsory pilot for certain small vessels on the Columbia and Willamette Rivers.

CHANGES TO RULE:

856-025-0030

Compulsory Pilotage Vessel Exemptions ¶

(1) On the Columbia River Bar, Coos Bay Bar and Yaquina Bay Bar pilotage grounds, the following vessels are exempt from compulsory pilotage:¶

(a) Foreign fishing vessels not more than 100 feet in length or 250 gross tons international,¶

(b) ~~R~~Foreign recreational vessels not more than 100 feet in length.¶

(2) On the Columbia- and Willamette River pilotage grounds, ~~there are no vessel following vessels are exempt from compulsory pilotage:~~¶

(a) All foreign fishing vessels and foreign recreational vessels less than 50 feet in length.¶

(b) All foreign fishing vessels and foreign recreational vessels at least 50 feet in length, but not more than 100 feet in length or 250 gross tons international, if the vessel complies with all three of the following criteria, no exemptions east (upstream) of longitude 123 degrees, 44 minutes, 00 seconds west:¶

(A) The vessel is operating with an activated Automatic Identification System (AIS);¶

(B) The vessel gives advance notice to the pilots of the Columbia and Willamette Rivers, during regular business hours, of its intent to enter the Columbia-Willamette River pilotage ground; and¶

(C) The vessel stands by at Marine VHF radio channel (frequency) 13 while transiting the Columbia and Willamette River pilotage ground. ¶

(3) On the Columbia and Willamette River pilotage ground, foreign fishing vessels and foreign recreational vessels at least 50 feet in length, but not more than 100 feet in length or 250 gross tons international that do not comply with all three of the criteria in subsections (2)(b)(A), (B), and (C) of this rule must take a state licensed pilot.

Statutory/Other Authority: ORS 776.115(7)

Statutes/Other Implemented: ORS 776.405(1)(C)