

REQUEST FOR TECHNICAL CHANGE

AGENCY: Cape Fear River Navigation and Pilotage Commission

RULE CITATION: 04 NCAC 15 - Submission for Permanent Rule forms

DEADLINE FOR RECEIPT: Friday, April 6, 2018

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In box 6 of the form for each of the rules, www.cfpilots.com is cited as the link to agency notice. This web site does not appear to exist. Do you mean www.cfpilot.com, without the "s"?

Does www.cfpilot.com serve as the commission's website? Who maintains this website? I can find no reference to the commission on the website. Do you have copies of the rulemaking notice that was required to be posted on the commission's website pursuant to G.S. 150B-19.1(c) and 150B-21.2(c)(1)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Thursday, March 22, 2018

REQUEST FOR TECHNICAL CHANGE

AGENCY: Cape Fear River Navigation and Pilotage Commission

RULE CITATION: 04 NCAC 15 .0119

DEADLINE FOR RECEIPT: Friday, April 6, 2018

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Lines 4-5 – delete everything to “following:” and begin Paragraph (a) with “The commission shall...”

Line 6 – add “subject to G.S. 76A-14” after “thereof”

Line 7 – what does “can be calculated at any time” mean? Could this sentence read: “Piloted vessel arrivals annually shall be determined by a five consecutive calendar year average using the five previous calendar years”?

Lines 7-9 – delete the sentence that begins “The then current...”

Line 11 – delete “extreme”

Line 11 – add “the” before “incapacity”

Line 11 – replace “by” with “of a pilot due to”

Line 12 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances govern whether the commission will issue limited licenses?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Thursday, March 22, 2018

1 04 NCAC 15 .0119 is readopted as published in 31:01 NCR 10 as follows:

2

3 **04 NCAC 15 .0119 NUMBER OF PILOTS**

4 (a) The maintenance of efficient pilot service for the river and bar requires a number of pilots in accordance with the
5 following: The commission shall license a number of pilots not to exceed one pilot per 98 piloted vessel arrivals
6 annually or fraction thereof. Piloted vessel arrivals annually shall be determined by a five consecutive calendar year
7 average and can be calculated at any time using the five previous calendar years. The then current active pilots shall
8 continue to serve with the Commission's power of reduction to be effective only in the case of natural attrition except
9 as provided in G.S. 76A-15.

10 (b) The apprentice system established in Rule .0121 of this Chapter shall be used to fill vacancies in the pilotage
11 service except in the case of extreme emergency, such as incapacity by accident, sickness or death. In such emergency,
12 the Commission may issue, upon recommendation of a majority vote of the association, one or more limited licenses
13 for such term as may be necessary.

14

15 *History Note: Authority G.S. 76A-1; 76A-5; 76A-13; 76A-14;*

16 *Eff. December 1, 1985;*

17 *Amended Eff. August 1, 2000;*

18 *Readopted Eff. May 1, 2018.*

19

REQUEST FOR TECHNICAL CHANGE

AGENCY: Cape Fear River Navigation and Pilotage Commission

RULE CITATION: 04 NCAC 15 .0121

DEADLINE FOR RECEIPT: Friday, April 6, 2018

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 5 – replace “regionally accredited” with “regionally-accredited” and “four year” with “four-year”

Line 17 – add “or she” after “he”

Line 19 – add a comma before “including”

Line 19 – delete “, but not limited to”

Lines 20-22 and 24-26 – begin each of these lines with “the”

Line 20 – what does “rules of the road” mean?

Line 21 – replace “navigate” with “navigation” if that is what is meant

Line 23 – delete “of”

Line 28 – what does “master the waters” mean? Is this a term of art that is well-understood by your regulated public?

Line 28 – what does “various vessels” mean? Consider replacing “the various vessels traversing the same” with “the types of vessels that frequently traverse these waters, such as...” and then list a few examples.

Line 29 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances govern whether the commission will issue a limited license?

Line 31 – replace “must sign” with “must have signed”

Line 32 – delete “thus”

Jason Thomas
Commission Counsel

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Line 33 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances govern whether the commission will issue a limited license?

Line 35 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances govern whether the commission will terminate an apprenticeship?

Lines 36-37 – It is not clear why this sentence is included in the rule. Do you mean:

The association shall recommend termination of an apprenticeship only if a majority vote of the association supports termination.

Page 2, line 2 – replace “must satisfy” with “must have satisfied”

Page 2, line 5 – replace “be” with “have been”

Page 2, line 8 – what statute authorizes the requirement that an applicant not be a child, sibling, or grandchild of a pilot?

Page 2, line 10 – replace “the apprentice” with “an apprentice”

Page 2, line 12 – add “or she” after “he” and add “or her” after “his”

Page 2, line 13 – replace “waiting for” with “the occurrence of”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Thursday, March 22, 2018

04 NCAC 15 .0121 is readopted as published in 31:01 NCR 10 as follows:

04 NCAC 15 .0121 APPRENTICESHIP

(a) In order to be considered for an appointment as an apprentice pilot, an applicant shall:

- (1) provide evidence of graduation from a maritime college or regionally accredited four year college or university or hold a valid Third Mate's Unlimited Ocean license;
- (2) not have been convicted of a felony;
- (3) provide evidence of 20/20 visual acuity uncorrected or corrected by lens;
- (4) provide evidence of being able to distinguish colors by means of the Stilling Test or other equivalent test accepted by the Coast Guard;
- (5) provide three personal references;
- (6) provide evidence of passing a complete physical examination in the form required by the Coast Guard for the issuance of an original federal pilot's license; and
- (7) be a citizen and resident of North Carolina.

(b) If determined by a majority vote of the association that the applicant has demonstrated the knowledge and skill necessary to obtain a limited license and approved by a majority vote of the commission, the applicant shall be issued an Apprentice Pilot's Certificate. He shall be known as an apprentice pilot during apprenticeship.

(c) Under the direct supervision of a pilot, an apprentice pilot shall become proficient in all matters appertaining to the duties of a pilot including, but not limited to:

- (1) rules of the road;
- (2) use of compass and navigate aids;
- (3) set of various currents;
- (4) boarding of vessels in heavy weather;
- (5) bearing of noted objects;
- (6) number, shapes, and colors of buoys; and
- (7) use of radar and ranges.

(d) An apprentice pilot shall make such boarding and trips and perform such duties as directed by a pilot in order to master the waters of the river and bar to master the handling of the various vessels traversing the same.

(e) A limited license may be issued to an apprentice pilot by the commission upon a determination by a majority of the association that the applicant has demonstrated the knowledge and skill necessary to obtain a limited license. Prior to advancing from one limited license to the next, a majority of the association must sign the limited license, thus certifying progressive development of the knowledge and skill necessary for a limited license. The commission may issue the next limited license upon a determination by a majority of the association that the applicant has demonstrated the knowledge and skill necessary to obtain that limited license.

(f) An apprenticeship may be terminated at any time there is a finding by the commission that progress is not being made or any of the requirements set forth in Paragraph (a) have been violated. A majority of the association may recommend termination of an apprenticeship.

1 (g) In order to be considered for an appointment as a pilot:

2 (1) an applicant must satisfy all statutory requirements for a Full License;

3 (2) an applicant must hold a Pilot's License issued by the Coast Guard;

4 (3) an applicant must not have been convicted of a felony;

5 (4) an applicant must be approved by majority of the commission;

6 (5) there must be a vacancy in the number of pilots established pursuant to Rule .0119 of this Chapter;

7 and

8 (6) the applicant shall not be a child, sibling, or grandchild of a pilot.

9 (h) Upon the successful completion of the apprentice pilot training program and the requirements for a full licensed
10 pilot, the apprentice pilot shall then be placed on the apprentice pilots waiting list in the order in which they complete
11 all such requirements. When a vacancy occurs in the number of full licensed pilots, the apprentice next in line shall
12 be appointed to that vacancy. If he declines, his name shall be stricken from the waiting list. During this interim,
13 between the expiration of the limited license and waiting for a vacancy, the apprentice shall be required to make an
14 average of two boardings per month under the supervision of a full licensed pilot.

15
16 *History Note: Authority G.S. 76A-1; 76A-5; 76A-6; 76A-12; 76A-13;*

17 *Eff. December 1, 1985;*

18 *Amended Eff. August 1, 2000;*

19 *Readopted Eff. May 1, 2018.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Cape Fear River Navigation and Pilotage Commission

RULE CITATION: 04 NCAC 15 .0123

DEADLINE FOR RECEIPT: Friday, April 6, 2018

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In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 4 – delete or define “Immediately”

Line 6 – replace “one hundred twenty” with “120”

Lines 7-8 – what does “appropriate sketches and diagrams” mean? How would a pilot know whether such diagrams are required?

Line 11 – why do you cite “76A-13 in the History Note? Consider deleting it if it does not provide authority for the Rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Thursday, March 22, 2018

1 04 NCAC 15 .0123 is readopted as published in 31:01 NCR 10 as follows:

2

3 **04 NCAC 15 .0123 INCIDENTS OR ACCIDENTS INVOLVING PILOTS**

4 (a) Immediately following any marine incident or accident involving a vessel in charge of a pilot, the pilot in charge
5 of the vessel shall give an oral report to the commission chairman or other member if the chairman is not available.

6 Within one hundred twenty hours of the pilot reaching his destination (the port inbound - sea buoy outbound), the
7 pilot shall submit to the commission a written narrative report including appropriate sketches and diagrams.

8 (b) The commission shall investigate such occurrence in accordance with G.S. 76A-5(d).

9

10 *History Note: Authority G.S. 76A-1; 76A-5; 76A-13;*

11 *Eff. December 1, 1985;*

12 *Readopted Eff. May 1, 2018.*

13

REQUEST FOR TECHNICAL CHANGE

AGENCY: Cape Fear River Navigation and Pilotage Commission

RULE CITATION: 04 NCAC 15 .0124

DEADLINE FOR RECEIPT: Friday, April 6, 2018

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In reviewing this Rule, the staff recommends that the following technical changes be made:

Lines 4-5 – what federal law or regulation is meant? Can such law or regulation be specified, or a few examples be given?

Line 6 – delete “the hours of”

Line 7 – add “either” before “one” and replace the “and” before “two” with “or”

Lines 8, 11, 12, and 16 – replace the period with a comma

Line 9 – add “either” before “one”

Line 10 – replace the “and” before “two” with “or”

Line 13 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances govern whether the commission will such a vessel to sail?

Line 15 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances govern whether the commission will prescribe conditions?

Line 16 – add “and” after the semicolon

Line 19 – what does “in the sole discretion of the pilot” mean? Does another rule govern the exercise of this discretion?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Thursday, March 22, 2018

1 04 NCAC 15 .0124 is readopted as published in 31:01 NCR 10 as follows:

2
3 **04 NCAC 15 .0124 MOVEMENT OF VESSELS**

4 (a) All vessels carrying ammunition, liquified gas, or other explosive material designated class "A" by federal law
5 or regulation:

6 (1) that are inbound shall calculate their estimated time of arrival at the sea buoy between the hours of
7 thirty minutes before sunup and one hour before sunset if designated for Sunny Point and two hours
8 before sunset if designated for the Wilmington docks.

9 (2) that are outbound shall not sail earlier than thirty minutes before sunup and not later than one hour
10 before sunset if bound from Sunny Point and two hours before sunset if bound from the Wilmington
11 docks.

12 (3) shall sail only under such weather and tide conditions that will permit safe passage.

13 (4) may be permitted in case of emergency to sail during nighttime hours with the approval of the
14 commission or its designated agent. Such a request with the emergency reasons shall be made
15 immediately in writing to the commission. The commission or its designated agent may prescribe
16 special conditions for such movement.

17 (5) shall obtain written permission from the Coast Guard before entering the Wilmington docks.

18 (b) All vessels not subject to Paragraph (a) may sail when ready at all hours, weather and tide conditions permitting,
19 in the sole discretion of the pilot.

20
21 *History Note: Authority G.S. 76A-1; 76A-5;*

22 *Eff. December 1, 1985;*

23 *Readopted Eff. May 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Cape Fear River Navigation and Pilotage Commission

RULE CITATION: 04 NCAC 15 .0127

DEADLINE FOR RECEIPT: Friday, April 6, 2018

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In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 6 – replace “will” with “shall”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Thursday, March 22, 2018

1 04 NCAC 15 .0127 is readopted as published in 31:01 NCR 10 as follows:

2

3 **04 NCAC 15 .0127 PILOTAGE RATES**

4 (a) Requests for rate revisions shall be submitted in writing to the secretary of the commission before February 1 of
5 the year in which the rate revision is requested.

6 (b) Proposed rate revisions will be considered by the commission at the first regular meeting after March 1 of the
7 year in which the rate revision is requested.

8 (c) The public shall be notified of any rate revision and its effective date by at least the following methods:

9 (1) publication in all Wilmington area newspapers;

10 (2) posting at the State Ports Authority Building of the N.C. State Ports Authority at Wilmington; and

11 (3) written notification to the N.C. Shipping Association.

12 (d) Rate revisions shall be effective July 1 of the year in which the rate is revised by the commission.

13

14 *History Note: Authority G.S. 76A-1; 76A-17;*

15 *Eff. December 1, 1985;*

16 *Readopted Eff. May 1, 2018.*

17

REQUEST FOR TECHNICAL CHANGE

AGENCY: Cape Fear River Navigation and Pilotage Commission

RULE CITATION: 04 NCAC 15 .0128

DEADLINE FOR RECEIPT: Friday, April 6, 2018

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

What statute authorizes the commission to require pilots to pay this commission? G.S. 76A-24 states that the association is to pay the commission this sum.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: Thursday, March 22, 2018

1 04 NCAC 15 .0128 is readopted as published in 31:01 NCR 10 as follows:

2

3 **04 NCAC 15 .0128 FEES**

4 Each pilot shall pay to the commission one-fourth of one percent of every pilotage fee received. Such payment shall
5 be made on the 10th day of each quarter for the pilotage fees received the preceding quarter.

6

7 *History Note: Authority G.S. 76A-1; 76A-24;*

8 *Eff. December 1, 1985;*

9 *Readopted Eff. May 1, 2018.*

10