

SUPPLEMENTAL MEMORANDUM

To: Secretary of State

From: Christina Hoefsmit, Esq., RIDEM, Office of Legal Services

Date: November 1, 2018

Re: Rhode Island State Pilotage Commission Rules and Regulations 250-RICR-80-00-9

AGENCY: Department of Environmental Management

DIVISION: Law Enforcement

RULE IDENTIFIER: 250-RICR-80-00-9

RULE TITLE: RHODE ISLAND STATE PILOTAGE COMMISSION RULES AND REGULATIONS

CONTACT PERSON: Christina Hoefsmit

SUPPLEMENTAL DOCUMENTS:

- **ACLU AUGUST 30, 2018 COMMENTS ON THE RHODE ISLAND STATE PILOTAGE COMMISSION RULES AND REGULATIONS**
- **PILOTAGE COMMISSION'S RESPONSE TO COMMENTS**
- **AMENDED CONCISE EXPLANATORY STATEMENT**

On October 26, 2018, DEM became aware that comments were submitted on the Rhode Island State Pilotage Commission Rules and Regulations via email on August 30, 2018. As a result of technical issues, the Commission never received these comments until October 26, 2018. Consequently, at the time of initial filing the Pilotage Commission was not aware of the existence of these comments.

With the help of technical support DEM was able to confirm that the comments were received. It is unclear why the email recipient was not aware of these comments. Consequently, the Commission submits this supplemental memorandum to address the August 30, 2018 comments.

The Commission and DEM are aware that these documents being submitted are not part of the rulemaking record published in the RICR and that the Department of State is unable to notify subscribers of the change to the rulemaking record. Further, the Commission and DEM acknowledge that they are responsible for communicating the change to its stakeholders and interested parties.

AMENDED CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, Section § 42-35-2.6 of the General Laws of Rhode Island, following is a concise explanatory statement:

AGENCY: Department of Environmental Management

DIVISION: Law Enforcement

RULE IDENTIFIER: 250-RICR-80-00-9

RULE TITLE: RHODE ISLAND STATE PILOTAGE COMMISSION RULES AND REGULATIONS

REASON FOR RULEMAKING:

The purpose of this regulation is to provide maximum safety from the dangers of navigation for vessels entering or leaving the waters of this state; to maintain a state pilotage system devoted to the preservation and protection of lives, property, and vessels entering or leaving waters of this state at the highest standard of efficiency; and, to insure an adequate supply of pilots well qualified for the discharge of their duties. The purpose of this amendment is to reformat the regulation in accordance with the RICR, to add an Incorporated Materials section and to make additional substantive and non-technical changes. Reformatting of the regulation in accordance with RICR includes, but is not limited to, renumbering, movement of text, and elimination of duplicative or non-regulatory text, among other format changes.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE:

(if any)

TESTIMONY, COMMENTS AND OBJECTIONS: Comments were received, please see attached response to comments.

CHANGE TO TEXT OF THE RULE: A typo was removed after the public comment period ended but otherwise no changes were made from the rule that was sent out to public notice.

REGULATORY ANALYSIS: This is a recodification with no substantive changes. Therefore, there are no societal benefits or costs due to this rulemaking.

DATE THE FINAL RULE WAS SIGNED BY THE AGENCY HEAD:



128 DORRANCE STREET, SUITE 400
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org | info@riaclu.org

**COMMENTS ON PROPOSED RHODE ISLAND DEM STATE PILOTAGE
COMMISSION RULES AND REGULATIONS [250-RICR-80-00-9]
August 2018**

This testimony is submitted on behalf of the American Civil Liberties Union of Rhode Island, the Center for Prisoner Health and Human Rights, Direct Action for Rights and Equality, and the R.I. Commission for Human Rights. We write to urge the deletion of a provision in the current and proposed Pilotage Commission regulations relating to “Offenses Involving Narcotic Drugs Marijuana and Depressants or Stimulant Drugs or Substances.”

Section 9.15(O)(1) provides in full:

No person who is convicted of violating any federal or state statute relating to using, growing, processing, manufacturing, selling, disposing, transporting, or importing of narcotic drugs, marijuana, or depressant or stimulant drugs or substance, is eligible for any license issued pursuant to R.I. Gen. Laws Chapter 46-9 or 46-9.1, as amended, for a period of at least ten (10) years after the date of conviction.

The Commission’s proposed regulations seeks to make only technical revisions to this provision. However, we submit that 9.15(O)(1) is arbitrary, unreasonable, unfair and discriminatory. We do not know when it was first adopted, but we believe the time for its elimination has come.

Rhode Island makes it extremely difficult for individuals with a criminal record to obtain an occupational license. Already, numerous licensed occupations in our state have some form of conviction-related barrier codified in legislation, which makes it deeply troubling to see an agency expand these barriers through the regulatory process, as we have been unable to find anything in state law that requires this restriction on licenses for individuals with a past drug offense history.

The focus on drug offenses to disqualify a person for a pilotage license is particularly ironic since, in recent years, the state has recognized the inappropriate harshness of its drug laws. In 2013, for example, possession of small amounts of marijuana were decriminalized. Yet under this regulation, a person convicted of an offense that is no longer even a crime must wait a number of years before being eligible to apply for a license. Even today, the number of people serving prison sentences for drug crimes is unjustifiably high. According to the most recent Department of Corrections statistics, over 13% of the male sentenced offender population is serving time for drug offenses.¹

The racially discriminatory impact of enforcement of the drug laws is also well-known and documented. For example, a report issued in 2013 showed that racially disparate arrest rates for marijuana possession existed in Rhode Island throughout a ten-year period studied (2001-2010). In the last year studied by that report, blacks in Rhode Island were arrested for marijuana possession at 2.6 times the rate of whites, and were seven times more likely to be arrested for this offense in the counties with the smallest minority populations. These major disparities exist even though national studies show that blacks and whites use marijuana at roughly similar rates.²

We know that individuals in licensed occupations tend to have higher wages and longer job tenure than their unlicensed peers. However, evidence also suggests that black and Latino men particularly feel the benefit of increased wages in licensed occupations as compared to their unlicensed peers. Barring justice-involved individuals from licensed occupations exacerbates the racial wage and wealth gaps in Rhode Island and the country.

¹ R.I. Department of Corrections FY 2017 Annual Population Report, October 2017:
<http://www.doc.ri.gov/administration/planning/docs/FY17%20Annual%20Population%20Report.pdf>

² The War on Marijuana in Black and White, American Civil Liberties Union, June 2013:
http://riaclu.org/images/uploads/The_War_on_Marijuana_in_Black_and_White.pdf

The regulation's lengthy punitive ban is also in tension with the state's piloting law. The statute provides, as a ground for disciplinary action against a pilot, situations where the "pilot is so addicted to the habits of intoxication, or the use of any drug, as to be unfit to be entrusted with the charge of a vessel." R.I.G.L. §46-9-22(3). This is certainly an appropriate safety standard for somebody licensed to pilot large vessels on the state's waterways, but it also appears to recognize that the mere possession or use of drugs should not automatically disqualify a person from keeping a license. It is even less tenable to require a person to wait ten years to qualify for one based on a criminal record that may not in any way demonstrate unfitness to pilot a vessel.³

It is incumbent upon the state to consider how critical employment is to the health and well-being of our most marginalized communities and stop putting additional barriers between people with criminal records and decent jobs. For these reasons, we request that the Commission delete Section 9.15(O)(1) in its amendment and re-promulgation of these regulations.⁴

We appreciate your attention to our views, and trust that you will give them your careful consideration. If the suggestions we have made are not adopted, we request, pursuant to R.I.G.L. §42-35-2.6, a statement of the reasons for not accepting these arguments. Thank you.

Submitted by:

Steven Brown, Executive Director, **ACLU of Rhode Island**
128 Dorrance Street, Suite 400 – Providence, RI 02903 riaclu@riaclu.org

Sarah Martino, Project Director, **The Center for Prisoner Health and Human Rights**
8 Third Street, 2nd Floor – Providence, RI 02906 Sarah.Martino@Lifespan.org

Fred Ordoñez, Executive Director, **Direct Action for Rights and Equality**
340 Lockwood Street – Providence, RI 02907 fred@daretowin.org

Annajane Yolken, Executive Director, **Protect Families First**
11 Almy Street – Providence, RI 02909 annajane.yolken@gmail.com

³ It is worth re-emphasizing that nothing in the piloting statutes themselves set criminal record restrictions on the qualifications to obtain a license. See R.I.G.L. §46-9-7.

⁴ A technical amendment would also need to be made to Section 9.15(O)(3), which makes reference to this provision.

Rhode Island State Pilotage Commission

Rhode Island State Pilotage Commission Rules and Regulations 2018

Response to Comments: The following Response is presented in the order in which the comments were received. Comments may have been edited and/or summarized and the response is in italicized text. Every attempt has been made to use the commenter's own words to the fullest extent possible.

Steven Brown, Executive Director, ACLU of Rhode Island; Sarah Martino, Project Director, The Center for Prisoner Health and Human Rights; Fred Ordoñez, Executive Director, Direct Action for Rights and Equality; and Annajane Yolken, Executive Director, Protect Families First, Providence, RI (written comments)

- Recommends the elimination of Part 9.15(O)(1) from the regulations on the basis that this provision makes it extremely difficult for individuals with criminal records to obtain occupational licenses. Such a lengthy ban disproportionately impacts minorities and marginalized communities especially in light of the decriminalization of some drug offenses. The commenters believe that R.I. Gen. Laws 46-9-22(3) provides adequate safeguards. Part 9.15(O)(1) reads as follows:

No person who is convicted of violating any federal or state statute relating to using, growing, processing, manufacturing, selling, disposing, transporting, or importing of narcotic drugs, marijuana, or depressant or stimulant drugs or substance, is eligible for any license issued pursuant to R.I. Gen. Laws Chapter 46-9 or 46-9.1, as amended, for a period of at least ten (10) years after the date of conviction.

This portion of the regulations was not up for public comment as no substantive changes were proposed in this rulemaking process. However, the Commission will take these comments under advisement for the next time the regulations are revised which is anticipated to be in 2019.