

CHAPTER 61

RULES OF THE BOARD OF COMMISSIONERS
OF PILOTAGE

Authority

N.J.S.A. 12:8-2.

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APPENDIX A

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. APPRENTICESHIP, LICENSE
EXAMINATION

Authority

N.J.S.A. 12:8-2.

Source and Effective Date

R.1993 d.385, effective August 2, 1993.
See: 24 N.J.R. 3477(a), 25 N.J.R. 3534(a).

7:61-2.1 Purpose

It is the purpose of this subchapter to reduce the possibility of marine disasters such as collisions and pollution causing oil spills in the waters of New Jersey extending from the Upper and Lower New York bays and the adjoining rivers, channels, ports and harbors southward to include the bays, rivers, harbors or ports extending to Atlantic City, by setting out rules governing the piloting of foreign vessels and United States vessels sailing under register and by ensuring that the state-licensed pilots charged with this responsibility are qualified by high levels of training and experience.

7:61-2.2 Scope

This subchapter prescribes the necessary qualifications and application procedures for persons wishing to be admitted to the apprenticeship program for Sandy Hook pilots, the general outline of the required apprenticeship program and licensure examination procedures.

7:61-2.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Commissioners” shall mean the Commissioners of Pilotage appointed by the Governor pursuant to N.J.S.A. 12:8-1.

“Pilotage” or “piloting” shall mean the boarding of a vessel for the purpose of advising the ship’s master to safely conduct it over or through the waters of New Jersey as set out in N.J.S.A. 12:8-1 et seq.

“Sandy Hook pilot” shall mean a person licensed in accordance with State law to pilot ships in the Port of New York and the ports of New Jersey.

“Sandy Hook pilot apprentice” shall mean a person duly registered with the Commissioners in accord with this chapter and actively serving the apprenticeship prerequisite to admission to the Sandy Hook pilot licensing examination.

“Sandy Hook Pilots’ Association” shall mean and include the United New Jersey Sandy Hook Pilots’ Benevolent Association and the United New Jersey Sandy Hook Pilots’ Association.

7:61-2.4 Number of apprentices

The number of Sandy Hook pilot apprentices shall be set by the Commissioners after consultation with the Sandy Hook Pilots' Association and the New York Board of Pilot Commissioners. The number shall be set so as to assure the sufficiency of the number of licensed Sandy Hook pilots necessary to safely, properly and adequately pilot ships into or out of the ports of New Jersey and New York.

7:61-2.5 Qualifications of applicants for apprenticeship

(a) A person wishing to be registered with the Commissioners as an apprentice shall present satisfactory evidence that he or she:

1. Is not less than 18 years of age;
2. Is of good moral character;
3. Is in good health, has normal visual acuity and color perception, normal hearing, and is free of speech impediment, and in general has the physical ability to perform the rigorous duties required of a Sandy Hook Pilot; and
4. Is the holder of a bachelor's degree from an accredited college or university.

(b) Applicants shall be screened through an independent testing and review process and the results submitted to a selection board appointed by the Commissioners and consisting of two New Jersey Commissioners, two members of the Board of Commissioners of Pilots of the State of New York as designated by the New York Commissioners, three New Jersey licensed Sandy Hook pilots and three New York licensed Sandy Hook pilots, as nominated by the respective state Sandy Hook pilots' associations. The availability of openings for applicant apprentices shall receive the widest dissemination by advertisement in area newspapers of general circulation and in appropriate trade journals. These requirements are designed to ensure that all who apply do so on an equal footing, and that those selected have the greatest ability, temperament and aptitude to be a ship's pilot.

(c) By agreement with the Sandy Hook Pilots' Association and pursuant to their by-laws and/or contractual agreements with the association of New York State licensed Sandy Hook Pilots, apprentices selected by the selection board pursuant to the procedures set out in (b) above may be designated as applicants for the licensure examination of either state. The Commissioners may accept as New Jersey registered apprentices those so designated after review of the recommendation of the selection board to ensure that the apprentice meets New Jersey standards for entry into the apprentice program.

(d) After selection and Board registration, the apprentice shall become an employee of the Sandy Hook Pilots' Association subject to the Association by-laws and rules of employment.

(e) Appropriate application and testing fees will be required from all applicants for apprentice selection in an amount sufficient to cover administrative costs and testing fees. Application forms and information concerning the apprenticeship program and application procedures may be obtained from the Sandy Hook Pilots Association, 201 Edgewater Street, Staten Island, New York. At least three months prior to any scheduled examination date notice of the scheduled examination date shall be published as set out in (b) above.

7:61-2.6 The registered apprenticeship

(a) The apprenticeship shall be served under the Sandy Hook Pilots' Associations who shall be responsible for assuring that all apprentices are fully instructed in such manner as to fully qualify them in every respect to perform the duties of a Sandy Hook pilot.

(b) The apprenticeship program shall include a minimum of four years training. Additional time requirements will vary depending on the varying levels of professional training already possessed by those entering the apprenticeship and the needs of the pilot service.

(c) All apprentices must acquire Merchant Mariners Documents with Ordinary Seaman's and Able-Bodied endorsements, a Motorboat Operator's License and a Master of Pilot Vessel's License issued with an endorsement as First Class Pilot, and necessary extensions of route for all areas of the ports of New York and New Jersey, all as issued pursuant to 46 C.F.R. Part 10 of the rules of the United States Coast Guard, and such other licenses and certificates as may be required for the training program, including, but not limited to, radar endorsements and radio operator certificates.

(d) In addition to the trips required to meet the requirements under (c) above, the apprentice shall make at least 225 additional trips during the last six to nine months of the apprenticeship on various ships under the supervision of a licensed Sandy Hook pilot.

(e) The apprenticeship shall include the prescribed academic courses at the Sandy Hook pilot school, or their equivalent.

(f) Instruction shall cover all aspects of piloting and shiphandling including, but not limited to, the use of navigation and communication equipment; the rules of the road, the use of aids to navigation, tides and currents, soundings, bearings and location of the several shoals, rocks, bars, and points of land, courses, distances, and depths of channels; and pollution control and environment protection. The apprentice shall learn the use of charts, coast pilots, tide tables, and current diagrams. The apprentice shall become familiar with the publications of the Army Corps of Engineers, the Coast Guard, the National Oceanic and Atmospheric Administration, and such other publications as may pertain to the piloting of vessels in the ports of New Jersey and New York.

(g) Each registered apprentice shall appear before the Commissioners periodically and at least once a year and shall demonstrate that he or she is making satisfactory progress in the apprenticeship program, and is complying with the academic requirements and with the rules and regulations of the training program.

(h) When an apprentice has completed all the requirements of the apprenticeship, the association shall certify his or her record to the Commissioners who shall review the record, and, if complete, shall admit the apprentice to the next scheduled licensing examination. Until such scheduled licensing examination, apprentices shall continue to be employed by the Sandy Hook Pilots' Association.

(i) The Commissioners shall periodically review and approve the course contents and practical experience requirements of the apprenticeship program after consultation with the Sandy Hook Pilots' Association and the New York State Board of Pilots.

(j) Before any change in the approved program is instituted, the Sandy Hook Pilots' Association shall report the proposed change to the Commissioners for approval.

(k) If at any time during the apprentice training program, but not less than four years prior to completion of training, it is determined by agreement between the Commissioners, the Board of Commissioners of Pilots of the State of New York and the associations (the Sandy Hook Pilots' Association and the United New York Sandy Hook Pilots Benevolent Association) that an apprentice should be licensed by a state to which he has not previously been designated for licensure, then and in that event, the apprentice's designation shall be appropriately amended and the apprentice shall be redesignated for licensure by the state as agreed by the parties aforesaid.

7:61-2.7 Dismissal of apprentices

(a) After an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, a registered apprentice may be dismissed from the program on a showing that he or she:

1. Has failed to complete academic assignments or to achieve passing grades on required tests and examinations;
2. Has refused to perform or failed to satisfactorily perform assigned apprenticeship duties or to carry out lawful orders;
3. Has been negligent and incompetent in the performance of assigned apprenticeship duties;
4. Has failed to comply with the rules and regulations of the Sandy Hook Pilots Association training program that have been approved by the Commissioners;

5. Has used or been found in possession of any illegal controlled dangerous substance;

6. Has pled guilty or nolo contendere or has been convicted of a crime of moral turpitude;

7. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

8. Has engaged in conduct inconsistent with, or which reflects adversely on, the position of registered apprentice, as may be determined by the Commissioners;

9. Is temperamentally unfit to fulfill the role of pilot; or

10. Is incapable, for medical or any other good cause, of discharging the necessary functions and duties of an apprentice pilot.

(b) Upon receipt by the Commissioners of verified information that grounds for dismissal exist, the apprentice shall be so notified by registered letter which shall state the reasons for the proposed dismissal and shall offer the apprentice the opportunity to respond within 10 days of receipt of the letter to contest the determination and to request a hearing. If no response is received the letter of notice shall become a final order of dismissal.

7:61-2.8 Examination

The Commissioners shall conduct examinations for initial licensure as a deputy pilot on an as-needed basis, depending on the schedule of the certification of apprentices by the Sandy Hook Pilots' Association and the need to assure the availability of the number of pilots necessary to provide safe, adequate and proper pilotage of ships requiring the services of a New Jersey or New York licensed pilot.

7:61-2.9 Branch pilots

Full branch pilot licenses, or licenses to handle ships of unlimited draft and tonnage, shall be issued to deputy pilots who have demonstrated the necessary proficiency, and grades of proficiency shall be established for deputy pilots depending on their experience and years of active service.

SUBCHAPTER 3. DRUG FREE WORKSHOP PROGRAM

7:61-3.1 Scope, authority and purpose

(a) The purpose of this subchapter is to implement the New Jersey Board of Commissioners of Pilotage's ("Board") policy to maintain a drug and alcohol-free workplace. Pursuant to N.J.S.A. 12:8-1 et seq., the Board is the agency of the State of New Jersey responsible for licensing and regulating pilots and apprentices of the State. In carrying out this responsibility, the Board is firmly committed to the

protection of the environment and to the safest and most efficient operation of all ports and waters served by New Jersey licensed pilots and registered apprentices. It is the Board's responsibility, pursuant to N.J.S.A. 12:8-1 et seq., to ensure that all New Jersey licensed pilots and registered apprentices are competent and fit for duty, and to maintain public confidence in New Jersey licensed pilots and registered apprentices. To carry out this responsibility, the Board is requiring the United New Jersey Sandy Hook Pilots' Benevolent Association and the United New Jersey Sandy Hook Pilots' Association (collectively referred to as the "Association") to test New Jersey licensed pilots and registered apprentices for dangerous drugs and alcohol in the workplace and to report the verified positive results of any such test to the Board.

(b) It is the responsibility of each New Jersey licensed pilot and registered apprentice to comply with the requirements of this subchapter. The stringent requirements of this subchapter reflect the heavy responsibility borne by every New Jersey licensed pilot and registered apprentice, the safety-sensitive nature of the responsibilities of State-licensed pilots and apprentices and the difficulty of defining any level of dangerous drugs or alcohol which rules out the possibility of impairment.

(c) This subchapter prohibits, among other things, the use or possession of dangerous drugs by a New Jersey licensed pilot or registered apprentice whether on duty, subject to being called on duty or off duty. This subchapter also prohibits, among other things, the use of alcohol by a New Jersey licensed pilot or registered apprentice while both on duty or subject to being called on duty or during a four hour period prior to both being on duty or subject to being called on duty.

7:61-3.2 Application, severability and notice of rules

(a) This subchapter applies to all New Jersey licensed pilots and registered apprentices regardless of classification.

(b) Chemical drug testing of New Jersey licensed pilots and registered apprentices must be conducted as required by this subchapter.

(c) Every licensed pilot or registered apprentice must receive a copy of these rules from the President of the Association and such receipt shall be documented.

(d) Each section of this subchapter is severable. In the event that in any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

7:61-3.3 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

"Alcohol" means ethyl alcohol (ethanol). References to use or possession of alcohol include use of any beverage, mixture or preparation containing ethyl alcohol.

"Apprentice" means a person who is registered with the Commissioners pursuant to N.J.S.A. 12:8-10.

"Association" means the United New Jersey Sandy Hook Pilots' Benevolent Association or the United New Jersey Sandy Hook Pilots' Association.

"Board" or "Commissioners" means the New Jersey Board of Commissioners of Pilotage.

"BreathScan" means a portable breathalyzer with the trade name *BreathScan* found suitable by the National Highway Traffic Safety Administration as a first line test for breath alcohol concentration quantification or its equivalent.

"Chemical drug test" means a scientifically recognized test which analyzes an individual's breath, blood, urine, for evidence of dangerous drug or alcohol use.

"Controlled substance" means a controlled substance listed in schedules I through V of 21 U.S.C. 812.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or state criminal drug statutes.

"Criminal drug statute" means any Federal or state criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance or drug.

"Dangerous drug" means a narcotic drug, controlled substance and/or marijuana as defined in 21 U.S.C. 802 including substances listed in Schedules I through V of 21 U.S.C. 812.

"Directly involved" means issuing or failing to issue an order, or taking an action or failing to take an action which is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing an incident or in exacerbating or aggravating the severity of an incident.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

"Fails a chemical drug test for drugs" means the test result is reported as positive for the presence of dangerous drugs or drug metabolites in an individual's system after a medical review officer's review.

"Hazardous substance" means a hazardous substance as defined by N.J.S.A. 58:10-23.11b.

"Intoxicant" as used throughout 46 C.F.R. part 16 and 49 C.F.R. part 40 means any form of alcohol, dangerous drug, or combination thereof.

"Intoxicated" as used throughout N.J.S.A. 12:8-1 et seq. means to have a positive alcohol test.

"Medical Review Officer" means a licensed physician designated by the Association to carry out the duties specified in this subchapter and who meets the qualifications of 49 CFR 40.33(b).

"On duty" means any time period during which a pilot or apprentice is engaged in pilotage operations or related duties.

"Pass a chemical drug test" means not to test positive for the presence of a dangerous drug or drug metabolites in an individual's system after a Medical Review Officer's review.

"Pilot" means a person duly licensed by the Commissioners as a pilot in New Jersey pursuant to N.J.S.A. 12:8-1 et seq.

"Pilot operations" means to navigate, steer, direct, manage, or sail a vessel, or to control, monitor, or maintain the vessel's main or auxiliary equipment or systems. Operation includes:

1. Determining the vessel's position, piloting, directing the vessel along a desired trackline, keeping account of the vessel's progress through the water, ordering or executing changes in course, rudder position, or speed, and maintaining a lookout;

2. Controlling, operating, monitoring, maintaining, or testing: the vessel's propulsion and steering systems; electric power generators; bilge, ballast, fire, and cargo pumps; deck machinery including winches; windlasses, and lifting equipment; lifesaving equipment and appliances; firefighting systems and equipment; and navigation and communication equipment; and

3. Mooring, anchoring, and line handling, loading or discharging of cargo or fuel; assembling or disassembling of tows; and maintaining the vessel's stability and watertight integrity.

"Positive alcohol test" means a blood alcohol concentration of .04 percent or greater as measured by grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath.

"President of the Association" means the duly elected or appointed President of the Association.

"Subject to being called on duty" means any time period during which a pilot or apprentice is required to be available to be called "on duty" by the Association.

"User of dangerous drugs" means an individual who fails a test for dangerous drugs.

"Workplace" means any location at which pilotage or related duties are performed, including, but not limited to, vessels, motor vehicles, offices or government facilities.

7:61-3.4 Prohibitions

(a) No pilot or apprentice shall:

1. Except as set forth in N.J.A.C. 7:61-3.5, use, possess, manufacture, distribute, sell or dispense dangerous drugs at any time whether on duty or off duty;

2. Consume alcohol either while on duty or while subject to being called on duty or during the four hour period prior to being on duty or subject to being called on duty;

3. Be intoxicated by having a blood alcohol concentration of .04 percent or greater either while on duty or while subject to being called on duty or during the four hour period prior to either being on duty or subject to being called on duty;

4. Fail to cooperate with any aspect of the specimen collection or chemical drug testing program set forth in this subchapter; or

5. Violate any other provision of this subchapter.

(b) Any pilot or apprentice who violates (a) above shall be subject to penalties, including suspension or license revocation, as set forth in this subchapter.

7:61-3.5 Use of prescribed dangerous drugs

(a) Possession and/or use of dangerous drugs by a pilot or apprentice may be permitted if specifically prescribed by a licensed physician; provided that the dangerous drug is being used at the prescribed dosage and is in the original container clearly labeled with the Pilot or apprentice's name, the name of the drug, and the prescribing physician's Federal Drug Enforcement Administration number, and that prior to the possession or use by the pilot or apprentice of the dangerous drug:

1. The Medical Review Officer (MRO) is provided with a written, sworn certification by the pilot or apprentice that:

- i. The pilot or apprentice described his or her assigned duties to the prescribing physician before the drug was prescribed, and furnished the physician with a written official description of his or her duties provided by the Board, and that the prescribing physician advised the pilot or apprentice that use of the prescribed dangerous drug at the prescribed dosage is consistent

with the safe performance of the pilot or apprentice's duties;

ii. The drug is in its original container clearly labeled with the pilot or apprentice's name, the name of the drug, and the prescribing physician's Federal Drug Enforcement Administration number; and

iii. The drug will be used at the dosage prescribed; and

2. The MRO has determined that use of the drug at the prescribed dosage is consistent with the safe performance of the pilot or apprentice's duties. The MRO shall inform the pilot or apprentice of his or her approval or disapproval of the use of the prescribed drug within 24 hours after receipt of the written, sworn certification of the pilot or apprentice.

7:61-3.6 Implied consent; cooperation with collection and testing

(a) Pilots or apprentices required to be tested for dangerous drugs and/or alcohol pursuant to this subchapter shall provide complete, valid, undiluted, unadulterated breath, urine or blood samples as requested pursuant to this subchapter; shall supply all information requested by the laboratory; and shall otherwise cooperate with all collection and testing procedures implemented pursuant to this subchapter.

(b) If a pilot or apprentice fails to comply or cooperate with any collection or testing procedure pursuant to this subchapter, or with collection site personnel, the Association shall be notified. The Association shall immediately inform the Board of any failure to comply or cooperate.

(c) As provided in this subchapter, failure to comply or cooperate with any collection or testing procedures implemented pursuant to this subchapter shall subject a pilot or apprentice to penalties, including suspension and/or license revocation, pursuant to N.J.S.A. 12:8-19.

7:61-3.7 Pre-registration testing

(a) The Board shall not enter on its books nor shall the Association employ an individual as an apprentice unless the individual passes a chemical drug test for dangerous drugs.

(b) The specific date of such chemical drug tests for dangerous drugs shall be unannounced, but shall occur within the month prior to the registration. Notice of the specific date of chemical drug test for dangerous drugs shall be provided only so far in advance as is necessary to ensure the individual's presence at the time and place set for testing.

7:61-3.8 Random testing

(a) The Association shall establish a program for the chemical drug testing of pilots and apprentices for dangerous drugs on a random basis.

(b) Random selection of pilots and apprentices means that every member of the population of pilots and apprentices has an equal chance of selection on a statistically valid basis. The testing frequency and selection process shall be such that pilot or apprentice's chance of selection continues to exist throughout a pilot's membership or an apprentice's employment. Therefore, pilots or apprentices randomly tested will remain in the pool of persons subject to testing even after the individual has been tested.

(c) A random test may be required on any day which a pilot or apprentice is subject to being called on duty or is on duty. Notice of a pilot or apprentice's selection for testing shall be provided only to the extent as is necessary to ensure the individual's presence at the time and place set for testing.

(d) The Association shall ensure that pilots and apprentices are tested on a random basis at an annual rate of not less than 50 percent of the total number of pilots and apprentices in the pool of Sandy Hook pilots and apprentices during each calendar year.

7:61-3.9 Reasonable belief testing

(a) The Association shall require any pilot or apprentice who is reasonably believed to have used or be using a dangerous drug and alcohol to submit to a chemical drug test for dangerous drugs and alcohol.

(b) The Association's decision to test must be based on a reasonable and articulable belief that the pilot or apprentice has used or is using a dangerous drug or alcohol based on direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use. Where practicable, this belief should be based on the observation of the pilot or apprentice by two pilots licensed by the State of New Jersey or licensed by the State of New York (Sandy Hook pilots).

(c) The Sandy Hook pilots who entertain the reasonable belief shall immediately notify the President or member of the Executive Committee of the Association. The President or member of the Executive Committee of the Association shall direct the pilot or apprentice to undergo a chemical drug test for dangerous drugs and alcohol as soon as practicable, but not more than eight hours after the Sandy Hook pilots notify the President or member of the Executive Committee of the Association of their reasonable belief.

(d) In all cases where an individual is required to be tested based upon a reasonable belief pursuant to (a) above, a written report shall be made, setting forth the facts upon which the reasonable belief is based, including the specific, contemporaneous physical, behavioral, or performance indicators of probable dangerous drug or alcohol use. The report shall be signed by the Sandy Hook pilots who had the reasonable belief, and by the President or member of the Executive Committee of the Association. This report shall be submitted to the Board within 72 hours of the administering of the chemical drug test for dangerous drugs and alcohol.

(e) Any pilot or apprentice required to undergo reasonable belief testing shall be prohibited from engaging in pilotage operations pending the outcome of the tests. The pilot or apprentice shall be returned to normal duties if the tests are negative.

7:61-3.10 Post-incident testing

(a) A pilot or apprentice shall submit to a post-incident chemical drug test for dangerous drugs and alcohol if he or she is directly involved in an incident which results or is likely to result in:

1. Property damage exceeding \$10,000;
2. An injury to any person requiring professional medical treatment beyond first aid; or
3. A discharge of a hazardous substance into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

(b) The President or member of the Executive Committee of the Association shall direct any pilot or apprentice directly involved in the incident to report for the chemical drug test for dangerous drugs and alcohol as soon as practicable, but not more than eight hours after the incident.

(c) Any pilot or apprentice required to undergo post-incident testing shall be prohibited from engaging in pilotage operations pending of outcome of the tests. The pilot or apprentice shall be returned to normal duties if the tests are negative.

7:61-3.11 Drug testing procedures

(a) This subchapter incorporates by reference the Federal procedures for transportation workplace drug testing programs set forth at 49 CFR Part 40 regarding the preparation for drug testing, specimen collection and laboratory analysis. All drug testing required pursuant to this subchapter will be done by urinalysis. The Federal regulations must be consulted to determine the specific procedures which must be established and utilized by the Association in carrying out its drug testing program. Generally, the Federal regulations provide: that the privacy of the pilot or apprentice is maintained during specimen collection while ensuring the integrity of the specimen; that only laboratories using qualified personnel and which are certified by the Federal Department of Health and Human Services are to be used; and that laboratories are following quality assurance and quality control procedures.

1. Preparation for testing and specimen collection shall be conducted in accordance with 49 CFR 40.23 and 40.25.
2. The testing laboratory personnel shall meet all requirements at 49 CFR 40.27.

3. The testing laboratory analysis procedures shall be those required by 49 CFR 40.29.

4. The testing laboratory quality assurance and quality control procedures and standards shall be those required by 49 CFR 40.31.

5. The testing laboratory shall meet all requirements at 49 CFR 40.39.

7:61-3.12 Alcohol testing procedures

(a) Chemical drug testing for alcohol shall be conducted by a two-step process. Initial screening shall be performed by using a portable breathalyzer, the *BreathScan* or its equivalent.

(b) The *BreathScan* units are manufactured to show a full color change at the 0.04% blood alcohol level (BAC) level.

(c) The *BreathScan* screening will be performed by personnel employed by the drug testing facility with which the Association contracts pursuant to N.J.A.C. 7:61-3.18.

(d) The testing by the *BreathScan* units and maintenance of the *BreathScan* units will be conducted according to the manufacturer's instructions included with each unit.

(e) A color change in the testing unit indicating a BAC level above or at the 0.04 percent level will require follow-up chemical drug testing in order to confirm the precise alcohol level. The President or a member of the Executive Committee of the Association shall direct any pilot or apprentice screening positive to report for a blood test for alcohol as soon as practicable, but not more than one hour after the initial screening. The blood sample will be collected, tested and reported under chain of custody procedures by qualified, trained personnel employed by the drug testing facility with which the Association contracts pursuant to N.J.A.C. 7:61-3.18.

(f) A pilot or apprentice will be deemed to have tested positive for alcohol if the confirming blood test shows a level of 0.04 percent or above for grams of alcohol per 100 milliliters of blood.

7:61-3.13 Medical Review Officer—verification and reporting of positive test results

(a) The Association shall designate a Medical Review Officer (MRO) meeting the qualifications of 49 CFR 40.27. The MRO shall review all chemical drug test results for dangerous drugs or alcohol reported by the laboratory as positive and shall verify that the laboratory reports of the results are reasonable and shall examine alternate medical explanations for positive test results.

(b) The MRO shall promptly contact all individuals with positive test results and shall, prior to reporting the test as positive to the Association and the Board, provide the individual with an opportunity to discuss the test results.

(c) If the MRO determines that the test is false-positive or if the MRO determines that the test results are scientifically insufficient for further action, the test shall be reported as negative.

(d) The MRO shall report all verified positive test results and indicate the dangerous drugs and/or alcohol for which there was a verified positive test to the President of the Association within 48 hours of their verification by the MRO.

(e) The President of the Association shall, within 48 hours after receipt of the MRO's report, provide a written report of all verified positive test results and indicate the drugs and/or alcohol for which there was a verified positive test to the Board.

7:61-3.14 Protection of employee records

(a) The laboratory performing chemical drug testing pursuant to this subchapter shall report the test results only to the MRO.

(b) The MRO shall maintain the confidentiality of the chemical drug test results and report only verified positive test results and the drugs and/or alcohol for which there was a verified positive test to the Association and/or the Board.

(c) The Association and the Board shall maintain the confidentiality of the chemical drug test results and release information regarding verified positive tests only in the context of a hearing before the Board or in a lawsuit, grievance or other proceeding arising from a verified positive chemical drug test.

(d) The laboratory shall disclose information related to a positive chemical drug test of an individual only to the individual, the Association, the Board or decisionmaker in a lawsuit, grievance, or other proceeding arising from a verified positive chemical drug test.

(e) Any pilot or apprentice who is the subject of a chemical drug test conducted under this subchapter shall, upon written request, have access to any records relating to his or her chemical drug test.

7:61-3.15 Notice to Board of criminal or Coast Guard charges and convictions

(a) All apprentices and pilots shall notify the President of the Association in writing within 24 hours or prior to reporting on duty, whichever event occurs first, after being formally charged with a violation and/or being convicted under:

1. Any Federal or state criminal drug statute;
2. Any United States Coast Guard regulation pertaining to the use or possession of drugs or alcohol; or
3. Any motor vehicle statute for driving while under the influence or driving while intoxicated.

(b) Within 48 hours after receipt of written notification of conviction, the Association shall provide written notification of such conviction to the Board.

(c) The Association shall require any pilot or apprentice who tests positive for dangerous drugs or alcohol in a test required by any Federal or state statute or regulation, including a motor vehicle statute, to submit to a chemical drug test for dangerous drugs at the pilot's or apprentice's expense within 48 hours of such positive test and to be subject to increased, unannounced chemical drug testing for dangerous drugs and/or alcohol at the pilot's or apprentice's expense for a period as determined by the Board of up to 24 months.

Amended by R.1994 d.449, effective September 6, 1994.
See: 26 N.J.R. 2238(a), 26 N.J.R. 3715(a).

7:61-3.16 Suspension or revocation of license/appointment

(a) Any pilot who is intoxicated while on duty or subject to being called on duty shall immediately be prohibited from engaging in pilotage operations and shall, after opportunity for a hearing:

1. For the first offense:
 - i. Forfeit the pilotage fee for the pilotage operations performed while intoxicated;
 - ii. Be suspended from duty for six months; and
 - iii. Pay a penalty of \$50.00; and
2. For the second offense, have his or her license permanently revoked.

(b) Any apprentice who is intoxicated while on duty or subject to being called on duty shall immediately be prohibited from engaging in pilotage operations and shall, after opportunity for a hearing, have his or her registration permanently revoked.

(c) Any pilot or apprentice who fails to comply or cooperate with specimen collection and/or chemical drug testing; or who tests positive on a chemical drug test required pursuant to this subchapter or a chemical drug test required pursuant to a Federal statute or regulations, including 46 C.F.R. part 16; or who is convicted under a Federal or state criminal drug statute or for a second conviction under any state motor vehicle statute for driving while under the influence or driving while intoxicated; or who violates any other provision of the subchapter, shall immediately be prohibited from engaging in pilotage operations and shall, after opportunity for a hearing, have his or her license/registration permanently revoked unless there are extenuating circumstances which, in the discretion of the Board, justify only the suspension of his or her license/registration.

(d) Any pilot or apprentice who was prohibited from engaging in pilotage operations pending a hearing before the Board and who is not suspended or who does not have his or her license/registration revoked following his or her hearing before the Board shall be returned to normal duties and shall receive retroactive pay for the period during which he or she was prohibited from engaging in pilotage operations.

(e) Any pilot or apprentice who is suspended from duty pursuant to (a), (b) and/or (c) above must pass a chemical drug test for dangerous drugs and alcohol prior to reinstatement. The specific date of such test shall be unannounced, but shall occur within the month prior to reinstatement. Notice of the specific date of such test shall be provided only so far in advance as is necessary to ensure the individual's presence at the time and place set for testing. In addition, the pilot or apprentice shall be subject to increased, unannounced chemical drug testing for dangerous drugs and alcohol at the pilot's or apprentice's expense for a period as determined by the MRO of up to 60 months.

Amended by R.1994 d.449, effective September 6, 1994.
See: 26 N.J.R. 2238(a), 26 N.J.R. 3715(a).

7:61-3.17 Hearings and appeals

(a) Hearings conducted for violations of this subchapter and the imposition of penalties shall be conducted before the Board or if the Board so directs shall be referred to the Office of Administrative Law pursuant to the procedures at N.J.A.C. 1:1.

(b) Notice of hearing, time and place of hearing, alleged violation(s) and possible penalties to be imposed shall be in writing. This written notice of hearing must be received by the alleged violator, either by personal service or by certified mail sent to his or her usual place of abode, at least 15 calendar days prior to the date of the hearing.

7:61-3.18 Responsibilities of the Association

(a) After consultation with and approval by the Board, the Association shall promptly enter into an agreement(s) or contract(s) with a testing facility and an MRO for the performance of the tests and duties required by this subchapter.

(b) It shall be the responsibility of the Association, except as otherwise provided in this subchapter, to pay for the tests required by this subchapter and the fees of the MRO.

(c) It shall be the responsibility of the Association to direct the pilots and apprentices to present themselves at the time and place for the test(s) required by this subchapter.

(d) The contract(s) or agreement(s) between the Association and the laboratory selected to do the testing and the MRO shall provide that the laboratory and MRO shall cooperate with the Board and shall comply with the require-

ments of this subchapter including maintaining the confidentiality of test results, providing reports, providing documents and providing competent witnesses for hearings.

(e) This subchapter shall not in any way limit the authority of the Board to suspend or revoke the license of any pilot or terminate any apprenticeship as authorized by any other regulations of the Board or the laws of the State of New Jersey.

(f) The Association shall submit a copy of its proposed procedures implementing this subchapter and copies of the proposed agreement(s) or contract(s) between the Association and the organization designated to conduct the testing and MRO to the Board for review and approval.

(g) This subchapter shall not in any way preclude other drug or alcohol testing required or authorized by any state or Federal statute or regulation.

(h) At each regular meeting of the Board, the President of the Association shall report the number of random chemical drug tests performed pursuant to the requirements of this subchapter, a summary of the number of verified positive tests and negative tests and the dangerous drugs which have been identified in the verified positive tests.

(i) In the event the President of the Association is unable to perform the duties imposed upon him or her by this subchapter they may be performed by a member of the Executive Committee of the Association.

7:61-3.19 Incorporation by reference

(a) Any reference in this subchapter to any of the documents or sources listed in (c) below shall be deemed to incorporate such document or source by reference.

(b) Any future supplements or amendments to any of the documents or sources incorporated by reference into this subchapter will not be incorporated in this subchapter or become operative in New Jersey unless the Board proposes an amendment to this subchapter, and will provide opportunity for public comment on such proposed amendment, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) The following documents and sources are incorporated by reference within this subchapter:

1. United States Code, Title 21, Parts 802 and 812;
2. Code of Federal Regulations, Title 21, Parts 1301-1316; and
3. Code of Federal Regulations, Title 49, Part 40, Procedures for Transportation Workplace Drug Testing Programs, Sections 40.23, 40.25, 40.27, 40.29, 40.31 and 40.39.

APPENDIX A

INTERSTATE COMMISSION
WATER QUALITY REGULATIONS

OAL NOTE: The Water Quality Regulations of the Interstate Sanitation Commission (see N.J.S.A. 32:18-1 et seq. and 32:19-1 et seq.) are herein appended to the rules of the Department of Environmental Protection pursuant to a request by the Commission to the Office of Administrative Law, and with the approval of the Department of Environmental Protection. These regulations were neither promulgated by nor are they rules of the Department of Environmental Protection, but are included as an appendix to Title 7 for reference purposes to aid those consulting this title. The regulations are reproduced verbatim as promulgated by the Commission and are not codified pursuant to OAL standards.

WATER QUALITY REGULATIONS

(As amended through June, 1986)

The Commission's administratively made water quality regulations were adopted in 1971 with revisions in 1977 and further amendments in 1984 and 1986.

1. General

1.01. All Waters of the Interstate Sanitation District (whether of Class A, Class B, or any subclass thereof) shall be of such quality and condition that they will be free from floating solids, settleable solids, oil, grease, sludge deposits, color or turbidity to the extent that none of the foregoing shall be noticeable in the water or deposited along the shore or on aquatic substrata in quantities detrimental to the natural biota; nor shall any of the foregoing be present in quantities that would render the waters in question unsuitable for use in accordance with their respective classifications.

1.02. No toxic or deleterious substances shall be present, either alone or in combination with other substances, in such concentrations as to be detrimental to fish or inhibit their natural migration or that will be offensive to humans or which would produce offensive tastes or odors or be unhealthful in biota used for human consumption.

1.03. No sewage or other polluting matters shall be discharged or permitted to flow into, or be placed in, or permitted to fall or move into the waters of the District, except in conformity with these regulations.

2. Classifications of waters

2.01. There are two classes of waters within the Interstate Sanitation District: Class A and Class B. Each class is divided into subclasses. The requirements of Section 1 of these regulations shall apply to all waters within the Interstate Sanitation District. In addition, each subclass of the waters shall meet the requirements and be available for the uses as provided for that subclass.

2.02. It is the underlying principle of these regulations that each class and subclass of waters within the Interstate Sanitation District is to be suitable for its best intended uses and that all waters are to be protected, maintained, and improved to the end that they will afford as satisfactory conditions as possible for the maintenance and restoration of the natural ecosystems. It is also recognized that different classifications of waters are appropriate for different areas because of varying activities such as are associated with industry, commerce (including waterborne transportation), recreation, and aesthetic enjoyment. All waters should be aesthetic assets and should, at a minimum, be available for those recreational uses which do not bring the human body into direct contact with the water.

2.03(a). Streams and other waterbodies shall have a minimum dissolved oxygen content in accordance with their respective classifications as follows:

A: Dissolved Oxygen: 5 milligrams per liter

B-1: Dissolved Oxygen: 4 milligrams per liter

B-2: Dissolved Oxygen: 3 milligrams per liter

2.03(b). In addition to meeting the requirements set forth in Section 2.03(a) hereof, waters shall in all respects be suitable for their best intended uses as follows:

A: Suitable for all forms of primary and secondary contact recreation and for fish propagation. In designated areas, they also shall be suitable for shellfish harvesting.

B-1: Suitable for fishing and secondary contact recreation. They shall be suitable for the growth and maintenance of fish life and other forms of marine life naturally occurring therein, but may not be suitable for fish propagation.

B-2: Suitable for passage of anadromous fish and for the maintenance of fish life in a manner consistent with the criteria established in Sections 1.01 and 1.02 of these regulations.

2.04. As used in these regulations:

2.04(a). "Primary Contact Recreation" means recreational activity that involves significant ingestion risk, including but not limited to wading, swimming, diving, surfing, and waterskiing.

2.04(b). "Secondary Contact Recreation" means recreational activity in which the probability of significant contact with the water or water ingestion is minimal including but not limited to boating, fishing, and shoreline recreational activity involving limited contact with surface waters.

2.05. Effluents discharged or flowing into waters of any class shall meet the requirements provided herein. The effluent limitation values contained in subsection 2.05(b) are geometric means and in subsections 2.05(c) and (d) are arithmetic means. Industrial effluent limitation values are for process water volume. Any contaminants taken into the discharger's plant or process from the waters of the Interstate Sanitation District shall not be charged against the effluent quality in computing the values for compliance with these regulations.

2.05(a). pH within the range from 6.0 to 9.0 may be required if the receiving waters are outside this range.

2.05(b). Fecal coliform content shall not exceed 200 per 100 ml on a 30 consecutive day average; 400 per 100 ml on a 7 consecutive day average; and 800 per 100 ml on a 6 consecutive hour average, but no sample may contain more than 2400 per 100 ml. The only portion of the Interstate Sanitation District to which this provision shall not apply at all times is that referred to in Section 3.01(a)(2) hereof. For the aforementioned portion of the District, these disinfection requirements shall apply when disinfection is required to protect the best intended uses of the waters in question. For example, in the case of discharge into waters used primarily for bathing, this bacterial standard need not be required except during the bathing season.

2.05(c). Biochemical Oxygen Demand shall not exceed 30 mg/l on a 30 consecutive day average, 45 mg/l on a 7 consecutive day average, and 50 mg/l on a 6 consecutive hour average. Further, all sewage or other polluting matter discharged or permitted to flow into waters of the District shall first have been so treated as to effect a reduction in the oxygen demand of the effluent sufficient to maintain the dissolved oxygen content in the waters of the District and in the general vicinity of the point of discharge of the sewage or other polluting matter into those waters, at a depth of about five feet below the surface, of not less than the dissolved oxygen concentration set forth in Section 2.03.

2.05(d). Total Suspended Solids content shall not exceed 30 mg/l on a 30 consecutive day average, 45 mg/l on a 7 consecutive day average, and 50 mg/l on a 6 consecutive hour average.

2.05(e). Effluents shall contain no floating solids.

2.05(f). All wastes shall be of a character that will not violate or cause violation of the requirements contained in Section 1 "General".

2.05(g). An effluent discharge which does not satisfy the requirements of the Commission shall not be considered to be in violation thereof if caused by temporary excess flows due to storm water conveyed to treatment plants through combined sewer systems, provided that the discharger is operating the facility with reasonable care, maintenance, and efficiency and has acted and continues

to act with due diligence and speed to correct the condition resulting from the storm water flow.

2.06. Unless there has been rainfall in greater than trace amounts or significant melting of frozen precipitation during the immediately preceding 24 hours, no discharges to the waters of the Interstate Sanitation District shall occur from combined sewer regulating devices.

3. Consistency with States

3.01(a). The following waters of the Interstate Sanitation District are hereby classified as Class A:

(1) the East River east of the Whitestone Bridge and extending out and including the Long Island Sound waters west of a line from the easterly side of New Haven Harbor at Morgan Point in Connecticut to the easterly side of Port Jefferson Harbor in New York;

(2) the Hudson River from the New York-New Jersey State line opposite Hastings-on-Hudson to the northerly line of Rockland County on the westerly side and the northerly line of Westchester County on the easterly side;

(3) the Hudson River from its confluence with the Harlem River to the New York-New Jersey State line opposite Hastings-on-Hudson;

(4) the Raritan River east of the Victory Bridge and into Raritan Bay and to the lower end of the Arthur Kill on a line drawn from the southernmost point of Staten Island to the southernmost point of Perth Amboy;

(5) Sandy Hook Bay;

(6) the lower New York Bay northerly to a line drawn from the tip of Fort Wadsworth on Staten Island to the tip of Seagate in Brooklyn;

(7) the Atlantic Ocean and the estuaries and tidal waters thereof west of the easterly side of Fire Island Inlet and continuing into lower New York Bay.

3.01(b). The following waters of the Interstate Sanitation District are hereby classified as Class B-1:

(1) the Hudson River south of a line from the confluence with the Harlem River into the upper New York Harbor and the portion of the Lower Bay which is north of a line from Fort Wadsworth in Staten Island to the tip of Seagate in Brooklyn. For the purposes of these regulations, the upper New York Harbor terminates at the mouth of the Kill Van Kull (at a north-south line drawn from the northernmost point of Staten Island to the easternmost point at Constable Hook in Bayonne) and to the mouth of the East River (a true east-west line) passing through the southernmost tip of Manhattan Island at the Battery and extending to the east shore of the East River in Brooklyn);

(2) the waters of the East River north of a true east-west line passing through the southernmost tip of Manhattan Island to the Battery extending to the Whitestone Bridge (except that Newtown Creek shall remain B-2) and including the Harlem River to its confluence with the Hudson River;

(3) the lower portion of the Arthur Kill north of a line from the southernmost part of Staten Island to the southernmost part of Perth Amboy and south of Outerbridge Crossing.

3.01(c). The following waters of the Interstate Sanitation District are hereby classified as Class B-2:

the waters of the Arthur Kill north of Outerbridge Crossing and into and including the Newark Bay up to the mouths of the Passaic and Hackensack Rivers and into the Kill Van Kull west of a north-south line drawn from the northernmost point of Staten Island to the easternmost point at Constable Point in Bayonne.

3.02. The classifications made by these regulations shall be governed by and implement any water and related land resource plans, water use plans, or pollution control plans adopted by appropriate agencies of the signatory states. To this end, particular waters within a geographic area designated by these regulations as belonging to a given class or subclass shall, notwithstanding such designation, be deemed to belong to the class or subclass which is appropriate for the use or uses prescribed in the state water and related land resource plan, water use plan, or pollution control plan of the state in which the waters in question are situated and which is applicable thereto.

4. Commission Requirements Consolidated

4.01. It is the purpose and effect of these regulations to contain all of the water quality requirements of the Commission, whether in force because expressly set forth in the Tri-State Compact or in force because adopted by the Commission pursuant to the provision of the Compact variously known as Article XVII or Article VII.3. Accordingly, requirements contained in the Compact and still in force are repeated in these regulations and made part hereof. In accordance with Article XVII or Article VII.3 of the Compact, the other provisions of these regulations are in addition to or in substitution for requirements previously in force.

5. Variances

5.01. Any person or other entity discharging effluents is relieved of the requirements for such effluent contained in Section 2.05(c) and (d) if at all times of the year the waters into which the discharge enters meet the requirements of Section 2.03 of these regulations.

The foregoing applies only if the discharger who is discharging biochemical oxygen demand or total suspended solids or both has a permit from the U.S. Environmental Protection Agency or the state pursuant to Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1342), which permit has requirements or limitations relating to discharge of biochemical oxygen demand, total suspended solids, or both, as the case may be, and the discharger is complying with those requirements or limitations.

5.02. Nothing in these regulations shall be construed to encourage or give the sanction of the Interstate Sanitation Commission to the degradation of any waters which are of a quality consistent with these regulations. Accordingly, it is the responsibility of any discharger determining that he will proceed under these variance provisions to plan and operate his facilities and processes with due regard for present and changing conditions of and affecting the waters in his area. It shall not be a defense to a violation that the discharger did not anticipate or was not aware of changes which have resulted in the applicability of Sections 2.05(c) and (d) to his effluent discharge.

6. Policy

6.01. It is recognized that requirements with respect to the treatment and discharge of liquid wastes are subject to change from time to time and that an upgrading of requirements and standards may occur as circumstances make appropriate.

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