

CHAPTER 61

RULES OF THE BOARD OF COMMISSIONERS OF PILOTAGE

Authority

N.J.S.A. 12:8-1 et seq.

Source and Effective Date

R.2004 d.361, effective August 26, 2004.
See: 36 N.J.R. 2401(a), 36 N.J.R. 4305(a).

Chapter Expiration Date

Chapter 61, Rules of the Board of Commissioners of Pilotage, expires on August 26, 2009.

Chapter Historical Note

Chapter 61, Rules of the Board of Commissioners of Pilotage, was adopted as R.1993 d.212, effective May 17, 1993. See: 25 N.J.R. 625(a), 25 N.J.R. 2123(a).

Pursuant to Executive Order No. 66(1978), Chapter 61, Rules of the Board of Commissioners of Pilotage, was readopted as R.1998 d.244, effective April 22, 1998. See: 30 N.J.R. 764(a), 30 N.J.R. 1810(a).

Chapter 61, Rules of the Board of Commissioners of Pilotage, was repealed and Chapter 61, Rules of the Board of Commissioners of Pilotage, was adopted as new rules by R.1999 d.129, effective April 19, 1999. See: 31 N.J.R. 6(b), 31 N.J.R. 1084(b).

Chapter 61, Rules of the Board of Commissioners of Pilotage, was readopted as R.2004 d.361, effective August 26, 2004. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

7:61-1.1 Purpose and scope

(a) It is the purpose of this chapter to provide for the better government of pilots and pilot operations by the Board of New Jersey Commissioners of Pilotage and to require that pilots and apprentices are qualified through high levels of training and experience. This will reduce the risk of accidents and marine disasters.

(b) This chapter shall apply to all foreign vessels and all United States vessels sailing under register.

(c) This chapter applies to all licensed pilots and registered apprentices regardless of their classification or grade. The President of the Pilots' Association shall provide a copy

of this chapter to every licensed pilot and apprentice and receipt of this chapter shall be documented.

(d) The powers, duties, and functions vested in the Board by statute or the provisions of this chapter shall not be construed to limit the powers, duties, and functions vested therein under any provision of law or regulation except as specifically set forth in this chapter.

7:61-1.2 Construction, severability, and waiver

(a) This chapter shall be liberally construed to permit the Board to discharge its statutory and regulatory obligations.

(b) If any subchapter, section, subsection, or any portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation and the remainder of these rules shall not be affected thereby.

(c) The Board may grant a waiver of the provisions of this chapter when it determines that not granting a waiver would be detrimental to the public safety, the safety of a pilot, an apprentice, other person, or to any vessel or other property. The Board may grant a waiver through the issuance of an Order and the waiver shall be limited in scope and applicability to that particular circumstance.

7:61-1.3 Definitions

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

“Act” means the statute governing pilotage at N.J.S.A. 12:8-1 et seq.

“Apprentice” means a person who is registered with the Board pursuant to N.J.S.A. 12:8-10 and this chapter.

“Bar of Sandy Hook” means the built-up area under the waters between the northern most point of Sandy Hook extending generally northeastward to the south shore of Long Island caused by a deposit of sediment. The location of the Bar is not static.

“Board” means the Board of New Jersey Commissioners of Pilotage established by N.J.S.A. 12:8-1 et seq.

“Board President” means the President of the Board of New Jersey Commissioners of Pilotage.

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

“Deputy pilot” means a pilot of the third, fourth, fifth and sixth grade.

“Full branch pilot” means a pilot of the first grade.

“Limited branch pilot” means a pilot of the second grade.

“Occurrence” means any possible collision, allision, stranding, touching of bottom, power loss, steering loss, damage to or loss of property, personal injury, or discharge of a substance into the water.

“Order” means an order issued by the Board in accordance with N.J.A.C. 7:61-6.3.

“Physician” means either a person who is the holder of a M.D. degree and is licensed as a physician or is the holder of a D.O. degree and is licensed as an osteopath.

“Pilot” or “licensed pilot” means a person licensed by the Board to pilot regulated vessels pursuant to N.J.S.A. 12:8-1 et seq. and this chapter.

“Pilots’ Association” or “Association” means the United New Jersey Sandy Hook Pilots’ Benevolent Association or the United New Jersey Sandy Hook Pilots’ Association.

“Regulated vessel” means all vessels required by the laws of the State of New Jersey to take a licensed pilot.

“Rules of the Road” means the International Regulations for Preventing Collisions at Sea, 1972, (72COLREGS) 33 U.S.C. foll. § 1602 and/or the Unified Inland Rules, 33 U.S.C. §§ 2001-71.

“Sandy Hook pilot” means a person licensed in accordance with New Jersey or New York state law to pilot regulated vessels and is a member of the Pilots’ Association.

“Secretary” means the Secretary of the Board of New Jersey Commissioners of Pilotage.

“United States vessels sailing under register” means all U.S. vessels that are engaged in trade with foreign lands.

7:61-1.4 Board of Commissioners

(a) The Board shall annually elect the following officers from the Commissioners: Board President, Vice-President, Secretary, and Treasurer. The Board President shall chair all Board meetings. In the President’s absence, the Vice-President shall assume all of the President’s duties and responsibilities. The Secretary shall be responsible for the recording and publication of minutes of Board meetings. The Treasurer shall be responsible for the preparation of the Board’s financial affairs and reports.

(b) The Board shall hold regular meetings and notice of any regular meeting shall be made in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. In a situation where there exists a matter of urgency and importance, as defined by N.J.S.A. 10:4-9.b, the Board may hold a meeting where notice has not been provided.

(c) Any formal action taken by the Board shall be by a majority vote when there is a quorum present. A majority of the current membership of the Board constitutes a quorum. In an emergency situation or in any matter not expressly controlled by this chapter or the Act, the Board President may exercise discretion and take any necessary actions. The Board President shall report all such actions taken to the other Commissioners as soon as practicable.

(d) The Board shall have the authority to hire administrative staff and any other staff, independent contractors, or investigators in order to provide assistance in the implementation of the Act and this chapter.

(e) The Secretary may require a person requesting information from the Board to submit a written request and pay fees or costs where necessary. The Secretary shall review the request in accordance with the requirements of the Right to Know Law, N.J.S.A. 47:1A-1 et seq. and any other State or Federal law pertaining to public records, confidentiality, and/or the rules of evidence.

7:61-1.5 Requirement to take a licensed pilot

(a) The masters of all regulated vessels are required to carry a licensed pilot.

(b) The Pilots' Association shall utilize a rotation system for pilots as approved by the Board.

7:61-1.6 Fees for pilotage

(a) On or before the regular monthly meeting of the Board, the Pilots' Association shall render to the Treasurer:

1. An accounting of all fees collected for pilotage during the preceding month; and
2. A payment to the Board of a percentage of the fees collected as required by N.J.S.A. 12:8-4.

(b) Pilotage fees shall be those fees set forth in the New York Navigation Law at Book 36, Article 6, Section 87 et seq. and codified in the New York rules for the Board of Commissioners of Pilots, Title 21, Chapter II, Part 55 including all amendments and supplements thereto.

7:61-1.7 Incorporation by reference

(a) Any reference in this chapter to any of the items listed in (b) below, including any future supplements or amendments thereto, shall be deemed to incorporate such items by reference.

(b) The following statutes and regulations are incorporated by reference in this chapter:

1. United States Code, Title 21, Parts 802 and 812;
2. Code of Federal Regulations, Title 21, Parts 1301-1316;

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;

4. New Jersey Administrative Code (N.J.A.C. 1:1) Title 1, Chapter 1; and

5. The Rules of the Road as defined in N.J.A.C. 7:61-1.3.

SUBCHAPTER 2. PILOT APPRENTICESHIP

7:61-2.1 Scope

This subchapter prescribes the necessary qualifications and application procedures for persons wishing to be admitted to the apprenticeship program for Sandy Hook pilots. This subchapter also prescribes the requirements of the apprenticeship program.

7:61-2.2 Number of apprentices

The number of Sandy Hook pilot apprentices shall be set by the Board 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 regulated vessels.

7:61-2.3 Qualifications

(a) A person wishing to be registered with the Board as an apprentice shall present satisfactory evidence, at the time of the application, that he or she:

1. Is not less than 18 years of age and is not more than 27 years of age at the time of application as an apprentice;
2. Is of good moral character as evidenced through at least two written references provided by the applicant and background checks as may be directed by the Board;
3. Is in good physical health and at a minimum meets all of the medical and hearing requirements required of the holder of a First Class Federal Pilots' license without waiver and has passed a chemical drug test for dangerous drugs as set forth in N.J.A.C. 7:61-7.6;
4. Has a minimum uncorrected visual acuity of at least 20/50 in each eye, correctable to 20/20 in each eye;
5. Is able to satisfactorily pass one of the following tests for color perception without the use of color sensing lenses:
 - i. Pseudoisochromatic Plates (Dvornine 2nd Edition; AOC; revised edition or AOC-HRR; Ishihara 16-, 24-, or 38-plate editions);

- ii. Eldridge-Green Color Perception Lantern;
- iii. Farnworth Lantern;
- iv. Keystone Orthoscope;
- v. Keystone Telebinocular;
- vi. SAMCTT (School of Aviation Medicine Color Threshold Tester);
- vii. Titmus Optical Vision Tester; or
- viii. Williams Lantern;

6. Will hold a Bachelor's Degree from an accredited college or university at the time of registration as an apprentice;

7. Has the ability to read, write, and speak fluent English;

8. Is a citizen of the United States; and

9. Has demonstrated the aptitude, interpersonal skills and physical skills required of a pilot.

(b) Applicants shall be screened through an independent testing and review process and the results submitted to a selection committee consisting of one member of the New Jersey Board, one member or the Director of the Board of Commissioners of Pilotage of the State of New York as may be designated by the respective Boards of Commissioners, two New Jersey licensed Sandy Hook pilots and two New York licensed Sandy Hook pilots, as nominated by the respective state Sandy Hook pilots' associations. The availability of openings for applicant apprentices shall be advertised in area newspapers of general circulation and in appropriate trade journals. Qualified applicants shall be considered without discrimination because of race, color, religion, national origin, sex or marital status.

(c) By agreement with the Pilots' Associations, the Board, and the Board of Commissioners of Pilotage of the State of New York, apprentices selected by the selection committee pursuant to the procedures set out in (b) above may be designated as applicants for the license examination of either state. The Board may, at its discretion, accept as New Jersey registered apprentices those so designated after review of the recommendation of the selection committee to ensure that the apprentice meets New Jersey standards for entry into the apprentice program and the State's needs for pilots.

(d) After selection and Board registration, the apprentice shall become an employee of the Sandy Hook Pilots' Association in accordance with the Act at N.J.S.A. 12:8-10.

(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.

(f) The Board shall retain a list of 10 applicants in order of preference as determined by the selection committee and approved by the Board. Such list shall be retained for a period of two years from the date it is approved by the selection committee and, if during that period, it is determined that an additional apprentice is needed the Board shall select an applicant from that list in order of ranking on said list. If a selected applicant refuses registration or is unable to meet the requirements of apprenticeship at the time of registration, the Board shall select the applicant ranked next on the list. Upon subsequent selection(s) of applicants from the ranked list, any applicant who was deemed ineligible to meet the requirements of registration at the time of the last selection shall be selected if he or she now satisfies the requirements for registration. If, however, a selected applicant refuses registration, such applicant shall be deleted from the ranked list and shall not be considered upon subsequent selection(s).

7:61-2.4 The apprenticeship program

(a) The apprenticeship shall be served under the Sandy Hook Pilots' Association 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. Every apprenticeship shall be served in the pilot vessels of the Sandy Hook pilots.

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

(c) During the apprenticeship, all apprentices must acquire:

1. A Merchant Mariner's Document with Able-Bodied Seaman and Lifeboatman's endorsements;

2. A Federal Master of Pilot Vessel's License or higher 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

3. Such other licenses and certificates as may be required for the training program by the Association or the Board, including, but not limited to, ARPA (automatic radar plotting aid) certification and radar certification.

(d) In addition to the experience required to meet (c) above, the apprentice shall make at least 225 additional trips during the last nine months of the apprenticeship (at least 40 of which shall be made during hours of darkness) during the apprenticeship on vessels 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 an equivalent. Instruction shall cover all aspects of piloting and ship handling 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 current tables, 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 tables. The apprentice shall become familiar with the publications of the Army Corps of Engineers, the Coast Guard, the National Oceanic and Atmospheric Administration, the rules of the Board as contained in this chapter, and such other publications as may pertain to the piloting of vessels in the ports of New York and New Jersey.

(f) Each registered apprentice shall appear before the Board at least once a year to demonstrate that he or she is making satisfactory progress in the apprenticeship program, and is complying with the academic requirements and with all other requirements of the training program.

(g) The Board shall periodically review and approve the course contents and practical experience requirements of the apprenticeship program.

(h) Before any change in the approved apprenticeship program is instituted, the Pilots' Association shall obtain the approval of the Board.

(i) If an apprentice is absent from duty for more than 30 consecutive calendar days, the Association shall report the absence to the Board, and the Board may, after consultation with the Association, require the apprentice to make up the time lost.

7:61-2.5 Dismissal or suspension of apprentices

(a) After an opportunity to request a show cause hearing before the Board in accordance with N.J.A.C. 7:61-6.5, a registered apprentice may be dismissed or suspended 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 perform assigned apprenticeship duties or to carry out lawful orders;
3. Has been negligent or incompetent in the performance of assigned apprenticeship duties;
4. Has failed to comply with the by-laws, rules of employment, and requirements of the apprenticeship program of the Sandy Hook Pilots' Association;
5. Has failed to comply with the requirements of this chapter;

6. Meets any of the grounds in N.J.A.C. 7:61-7.3 or 7.15;

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

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

9. Has engaged in conduct unbecoming an apprentice.

(b) Upon receipt by the Board of verified information that grounds for dismissal or suspension exist, the apprentice shall be notified of his or her right to request a show cause hearing in accordance with N.J.A.C. 7:61-6.5. The notice shall offer the apprentice the opportunity to contest the determination by requesting a hearing within 10 days of receipt of the notice.

(c) If no timely response is received, the notice shall become a final Order and shall constitute final agency action unless the Board specifies otherwise.

(d) When a show cause hearing is held, the Board shall give due consideration to the issues presented and where necessary issue an Order of dismissal or suspension. Unless the Board specifies otherwise, such an Order shall constitute final agency action.

7:61-2.6 Examination of apprentices

(a) After an apprentice has completed all the requirements of the apprenticeship, the Pilots' Association shall certify his or her record to the Commissioners who shall review the record and consider the apprentice for the next scheduled licensing examination. Until such scheduled examination, apprentices shall continue to be employed by the Pilots' Association.

(b) The Board shall conduct examinations in accordance with N.J.A.C. 7:61-3, for initial licensure as a deputy pilot on an as-needed basis, depending on the schedule of the certification of apprentices by the Pilots' Association and the need to assure the availability of the number of pilots necessary to provide safe, adequate and proper pilotage of regulated vessels.

(c) The Board may request the Association to prepare an individual evaluation for each apprentice who is prepared to take the licensure examinations. The evaluation shall summarize the qualifications, piloting history, and limitations, if any, of each apprentice. Each evaluation shall conclude with a narrative rating of the apprentice as "recommended" or "not recommended." The Board shall consider, but is not bound by, the evaluation of the Association.

SUBCHAPTER 3. PILOT LICENSING

7:61-3.1 Scope

(a) No person shall be licensed as a pilot by the State of New Jersey except as provided in the Act and this chapter.

(b) This subchapter sets forth the qualifications and procedures that must be satisfied before any person is licensed as a pilot.

(c) Where necessary in the event of an emergency, the Board may issue a temporary pilot license to a person without requiring compliance with this subchapter. The temporary permit shall remain in effect as long the Board sees fit to resolve the emergency situation. The temporary license may be immediately revoked, for any cause or without cause, by the Board.

7:61-3.2 Notice of candidates

The Board, after full consideration of the provisions in N.J.A.C. 7:61-2.6, shall prepare a list of apprentices who are deemed qualified to take the pilot examinations and shall notify, via certified mail, those qualified candidates and those who failed to qualify. Unless the Board specifies otherwise, the Board's decision shall constitute final agency action.

7:61-3.3 Written examination

(a) Every applicant for an original license as a deputy pilot and every licensed pilot applying for an extension of route shall be required to take and pass a written examination which shall be prescribed by a Commissioner of the Board. The examination shall be administered and graded under the supervision of the Commissioner. Any branch pilot may attend such examination.

(b) The written examination shall test the applicant's qualifications for employment as a pilot and knowledge of pilotage routes.

7:61-3.4 Issuance of initial license as a deputy pilot

(a) The Board, after an applicant completes the examination and passages required in N.J.A.C. 7:61-2.4, 3.3 and 3.6, shall review the applicant's results at a regular meeting. The Board shall decide whether or not the applicant has successfully completed the apprenticeship and the required passages to the satisfaction of the Board and whether the applicant should be appointed as a deputy pilot. Unless the Board specifies otherwise, the Board's decision shall constitute final agency action.

(b) If the Board appoints an apprentice as a deputy pilot, the Board shall issue the deputy pilot a certificate of appointment. The certificate shall be signed by a majority of the Commissioners.

7:61-3.5 Route extension

(a) A licensed pilot wishing to extend or add a route shall complete at least 25 round trips as a pilot in training under the supervision and close scrutiny of pilots who are licensed for the route. During these 25 trips, the applicant shall observe the maneuvering of the vessels, which may or may not include such docking and undocking as may customarily be performed by licensed pilots. At least five of the 25 trips shall be made during hours of darkness.

(b) When applying to the Board to extend or add routes, the applicant shall provide a listing of all passages completed to fulfill the requirements for the extension that shall include the names, gross registered tonnages, and drafts of the vessels, dates and times of passages. The pilot shall sign a certification attesting to the veracity of the list. The pilot shall also provide two letters from pilots licensed for that route who supervised one or more of the training passages as defined in (a) above attesting to the pilot's competency to pilot vessels on that route.

(c) The Board shall consider the request and either deny or approve the application. Unless the Board specifies otherwise, the Board's decision regarding the request shall constitute final agency action.

7:61-3.6 Medical examination

(a) Every pilot and apprentice shall be examined at least annually for:

1. General health;
2. Hearing equivalent to that required of a holder of a First Class Federal Pilot's license;
3. Visual acuity of at least 20/20 (correctable) in each eye; and
4. Color perception as specified at N.J.A.C. 7:61-2.3(a)5.

(b) The examinations shall be performed by a physician as defined in N.J.A.C. 7:61-1.3. The physician shall provide his or her medical opinion as to whether the pilot or apprentice is competent to perform the duties of a pilot. The results of the examinations shall be reported to the Board and the Association on forms that have been approved by the Board at the time of the examination. The pilot shall provide the physician with a Board approved written description of a pilot's duties, which shall be signed and dated by the physician and returned to the Board.

(c) Examinations shall be at the expense of the individual being examined. The Board reserves the right to require additional examinations by physicians or specialists designated by the Board in which case the examinations shall be at the Board's expense. The results and findings of any original or additional examinations shall be made available to the Board, the Association, and the pilot or apprentice.

(d) If a physician reports that the health of a pilot, apprentice, or an applicant for license is deficient, the Board may, at its discretion:

1. Refuse to grant an original license and/or appointment;
2. Suspend or revoke an existing license or apprenticeship pursuant to N.J.A.C. 7:61-6.4;
3. Issue an Order which imposes conditions or limitations on the pilot's license or on the apprentice's training program; and/or
4. Require additional examinations.

(e) The Association shall not assign to a vessel a pilot or an apprentice if the pilot or apprentice has not successfully completed the annual examination required in (a) above or examinations as may be required in (c) above.

7:61-3.7 Oath, bond, and license

(a) After issuance of the certificate of appointment as a deputy or full branch pilot, the applicant shall present the certificate to the Office of the Secretary of State. The applicant shall request the administration of the Oath required by N.J.S.A. 12:8-16.

(b) After taking the oath, the pilot shall provide the Board, within a reasonable time, a bond in the sum of \$500.00, along with sureties of two active pilots, for the faithful discharge of the new pilot's duties. The two sureties shall be acceptable to the Board and shall be pilots in good standing.

(c) Upon the death, resignation, retirement or revocation of the license of any pilot whose name shall appear as surety upon any bond, such bond shall become void and the pilot whose bond it is shall forthwith furnish a new bond with two sureties acceptable to the Board.

(d) Within a reasonable time, the Board shall issue the pilot a license. The license shall be signed by the Secretary of State.

7:61-3.8 Retirement and age-related requirements

(a) (Reserved)

(b) All pilots over the age of 65 shall submit each year to two physical examinations, as specified in N.J.A.C. 7:61-3.6. The second examination shall take place approximately six months after the first examination.

(c) All pilots over the age of 68 are precluded from being licensed as a Grade 1 pilot and any Grade 1 pilot who reaches the age of 68 shall automatically be redesignated as a Grade 2 pilot.

Emergency amendment, R.2001 d.351, effective August 29, 2001 (to expire October 28, 2001).
See: 33 N.J.R. 3374(a).

In (c), substituted "68" for "65" throughout.
Adopted concurrent amendment, R.2002 d.18, effective January 7, 2002.

See: 33 N.J.R. 3374(a), 34 N.J.R. 275(a).
Provisions of R.2001 d.351 adopted without change.

7:61-3.9 General license requirements

(a) No person may operate as a licensed pilot unless such person:

1. Maintains a current ARPA (automatic radar plotting aid) and radar certificate;
2. Maintains a valid Federal first class pilot license and endorsement for the routes to be traversed;
3. Has fulfilled all of the requirements of the continuing education program which shall be administered by the Pilots' Association and approved by the Board; and
4. Has submitted to the Board and the Association evidence of the successful completion of required medical examinations.

(b) All pilots shall appear before the Board every year at the next Board meeting following the anniversary date of the pilot's attainment of deputy pilot status. In the event of a conflict, the Board may allow the pilot to appear at a later meeting. Before or at the meeting, the pilot shall provide:

1. A completed annual report form for the past year beginning on the anniversary date of the license which shall require the pilot to include:
 - i. The total number of vessels piloted;
 - ii. The number of days absent from duty due to illness;
 - iii. The routes for which the pilot holds endorsements; and
 - iv. Any activities, outside of piloting, related to the maritime industry that the pilot is involved in;
2. Copies of the results of the medical examinations set forth at N.J.A.C. 7:61-3.6; and
3. Such additional information as may be required of an individual pilot from time to time by the Board.

7:61-3.10 Grades of licensed and grade advancement

(a) All increases in grade, except advancement from Grade 6A to 6, 5A to 5, 3A to 3, and 2A to 2, shall be approved by the Board.

(b) The minimum length of service in each grade is set forth in (d) below. The Board may reduce or increase the grade of a pilot in accordance with N.J.A.C. 7:61-3.11 and 3.12.

(c) Pilots of the first grade shall be designated as full branch pilots; of the second grade, as limited branch pilots; and of the third, fourth, fifth and sixth grades, as deputy

pilots. Upon being advanced to pilot of the first grade, the pilot's license as a deputy pilot shall be withdrawn and a new license as a full branch pilot issued.

(d) For all pilots who obtain a certificate of appointment from the Board pursuant to N.J.A.C. 7:61-3.7(a) prior to October 1, 2001, the pilot licensed for a specific grade shall not pilot any vessel of draft or registered gross tonnage greater than that indicated below. The registered gross tonnage of a vessel shall be the highest tonnage published in Lloyd's Register of Ships. A pilot whose license is not of a grade that would allow assignment to the deepest vessel in a tow shall not be assigned to the towing vessel.

1. Grade 6: A Grade 6 pilot shall complete a minimum of one year length of service in Grade 6. The draft may not exceed 30 feet and the registered gross tonnage may not exceed 20,000.

2. Grade 5: A Grade 5 pilot shall complete a minimum of one year length of service in Grade 5. The draft may not exceed 33 feet and the registered gross tonnage may not exceed 25,000.

3. Grade 4: A Grade 4 pilot shall complete a minimum of one year length of service in Grade 4. The draft may not exceed 36 feet and the registered gross tonnage may not exceed 30,000.

4. Grade 3A: A Grade 3A pilot shall complete a minimum of one year length of service in Grade 3A. The draft may not exceed 39 feet and the registered gross tonnage may not exceed 40,000.

5. Grade 3: A Grade 3 pilot shall complete a minimum of one year length of service in Grade 3. The draft may not exceed 42 feet and the registered gross tonnage may not exceed 50,000.

6. Grade 2A: A Grade 2A pilot shall complete a minimum of one year length of service in Grade 2A. There are no draft limitations, but the registered gross tonnage may not exceed 50,000.

7. Grade 2: A Grade 2 pilot shall complete a minimum of one year length of service in Grade 2. There are no draft limitations, but the registered gross tonnage may not exceed 70,000.

8. Grade 1: There are no draft or tonnage limitations on the license.

(e) For all pilots who obtain a certificate of appointment from the Board pursuant to N.J.A.C. 7:61-3.7(a) on or after October 1, 2001, the pilot licensed for a specific grade shall not pilot any vessel of draft or registered gross tonnage greater than that indicated below. The registered gross tonnage of a vessel shall be the highest tonnage published in Lloyd's Register of Ships. A pilot whose license is not of a grade that would allow assignment to the deepest vessel in a tow shall not be assigned to the towing vessel.

1. Grade 6A: A Grade 6A pilot shall complete a minimum of one year length of service in Grade 6A. The draft may not exceed 30 feet and the registered gross tonnage may not exceed 20,000.

2. Grade 6: A Grade 6 pilot shall complete a minimum of one year length of service in Grade 6. The draft may not exceed 33 feet and the registered gross tonnage may not exceed 25,000.

3. Grade 5A: A Grade 5A pilot shall complete a minimum of one year length of service in Grade 5A. The draft may not exceed 36 feet and the registered gross tonnage may not exceed 30,000.

4. Grade 5: A Grade 5 pilot shall complete a minimum of one year length of service in Grade 5. The draft may not exceed 39 feet and the registered gross tonnage may not exceed 40,000.

5. Grade 4: A Grade 4 pilot shall complete a minimum of one year length of service in Grade 4. The draft may not exceed 42 feet and the registered gross tonnage may not exceed 50,000.

6. Grade 3: A Grade 3 pilot shall complete a minimum of one year length of service in Grade 3. There are no draft limitations, but the registered gross tonnage may not exceed 50,000.

7. Grade 2: A Grade 2 pilot shall complete a minimum of one year length of service in Grade 2. There are no draft limitations, but the registered gross tonnage may not exceed 70,000.

8. Grade 1: There are no draft or tonnage limitations on the license.

Emergency amendment, R.2001 d.351, effective August 29, 2001 (to expire October 28, 2001).

See: 33 N.J.R. 3374(a).

In (a), inserted "; 5A to 5"; in (d), rewrote the first sentence of the introductory paragraph and amended the draft and gross tonnage limitations in 1 through 7; and added (e).

Adopted concurrent amendment, R.2002 d.18, effective January 7, 2002.

See: 33 N.J.R. 3374(a), 34 N.J.R. 275(a).

Provisions of R.2001 d.351 adopted without change.

7:61-3.11 Reduction in grade of licenses or route suspension

(a) All licenses are subject to a reduction in grade or route suspension by the Board for any of the causes in N.J.A.C. 7:61-6.4(a).

(b) Upon receipt by the Board of information that grounds for a reduction in grade or route suspension exist, the pilot shall be notified of his or her right to request an adjudicatory hearing in accordance with N.J.A.C. 7:61-6.6.

7:61-3.12 Application for increase in grade of licenses

(a) A pilot wishing to increase the grade of a license for which approval is required by the Board shall give notice to the Board, through the Association, requesting a grade increase. This notice shall be submitted no earlier than 30 days prior to the eligibility date determined by using the minimum length of service requirements in N.J.A.C. 7:61-3.10(d).

(b) The pilot shall submit a memorandum, which shall include a signed certification attesting to the veracity of the memorandum, indicating:

1. A list of the names of the vessels piloted in existing grade;
2. The registered gross tonnage of the vessels piloted in the existing grade;
3. The drafts of the vessels piloted in the existing grade; and
4. The total number of vessels piloted in the existing grade.

(c) Prior to a pilot being advanced to a grade for which approval is required by the Board, the Association shall post at least 60 days in advance of the scheduled advancement and continue to be posted, in a prominent location at the pilots' headquarters and aboard the station, a notice regarding the pilot. The notice, in a form prescribed by the Board, shall advise all Sandy Hook pilots of the name of the pilot seeking advancement and the manner in which any pilot may communicate objections to the Board. When

posted the President of the Association or his or her designee shall provide the Board with a copy of the posted notice and shall state in writing that the notice has been posted as aforesaid.

(d) In the event that adverse information has come to the attention of the Executive Committee or the President of the Association, such information shall be sent to the Board in writing.

(e) The identity of the objector shall not be disclosed by the Board or the Association, except as may be required by legal process.

(f) A pilot requesting an increase in grade shall appear in person before the Commissioners at a regular meeting of the Board. The Board shall consider the request for an increase and such other information which, in its discretion, it deems relevant to either deny or approve the application. Unless the Board specifies otherwise, the Board's decision regarding a request for an increase constitutes final agency action.

SUBCHAPTER 4. PILOT BOATS AND STATIONS**7:61-4.1 Scope**

This subchapter sets forth certain requirements regarding the operation of pilot vessels and pilot stations.

7:61-4.2 Stationing of pilots

(a) For the purpose of receiving pilots from outward bound vessels and supplying pilots to inward bound vessels, the Association shall maintain a station, in the vicinity of the pilot station designated on the NOAA chart for the entrance of Ambrose and Sandy Hook Channels.

(b) The Association shall maintain a station at all times except when in the judgment of duly authorized representatives of the Association, during periods of extreme weather or an emergency, it is deemed prudent to relocate to sheltered waters, whereupon interested parties shall be immediately notified of the relocation.

7:61-4.3 Log books

(a) On board each station ship, or at each shore station from which vessels are served without the use of a station ship, the Association shall keep a log book in which shall be recorded for each regulated vessel:

1. The time of arrival of the cruising pilot vessel on, or departure from, station as applicable;
2. The name(s) of the pilot(s) embarking or disembarking the vessel;
3. The name of the vessel piloted;
4. The time the pilot(s) embarked or disembarked the vessel; and
5. Such additional information as is required in the practice of good seamanship.

(b) Log books shall be available for inspection by the Commissioners at all times. Each separate book, when filled, shall be filed in the office of the pilot association concerned and shall continue to be available for inspection by the Commissioners. Shore stations may substitute other forms of recordkeeping for log books but such records must include the above information.

SUBCHAPTER 5. DUTIES OF PILOTAGE**7:61-5.1 Scope**

This subchapter sets forth additional requirements and duties that must be met by all licensed pilots.

7:61-5.2 Piloting duties

(a) A pilot shall, in a timely fashion, provide pilotage services to all regulated vessels. However, a pilot shall only pilot a vessel of a size (tonnage or draft) that is authorized by the pilot's state license and only over routes authorized by the pilot's state license.

(b) Pilots shall be available for duty and accept pilotage assignments in accordance with a rotation schedule established by the Association.

(c) A pilot of an inbound vessel or a vessel being transported is entitled to discharge by the master of the vessel when the vessel has been brought to a safe anchorage or secured in the berth to which the vessel is bound.

(d) Whenever requested, the pilot shall assist with docking or undocking a vessel.

(e) A pilot is entitled to discharge by the master of an outbound vessel when the vessel reaches the vicinity of the pilot station unless the master expressly requests the pilot to remain on board for such purposes as returning the vessel to port, bringing the vessel to a safe anchorage, assisting due to weather conditions, or assisting the master in maneuvering the vessel in the vicinity of the pilot station.

(f) When requested by the master to remain with a vessel at an anchorage or berth, the pilot shall do so or arrange for a relief and shall not leave until the relief arrives. A pilot shall not leave a vessel that is underway unless the pilot has been properly relieved.

(g) All pilots shall comply with the Rules of the Road as defined in N.J.A.C. 7:61-1.3.

7:61-5.3 Master-pilot conference and unsafe passages

(a) Prior to assuming the con of a vessel, a pilot shall conduct a master-pilot conference.

(b) During the conference, the pilot will provide the master with information that a prudent pilot should convey to the master under the prevailing circumstances including, but not limited to:

1. Information specific to navigation and conditions along the intended route;
2. Tug assistance;
3. Transfer of pilotage duties to others;
4. The pilot's lookout and anchor watch requirements; and
5. The pilot's bridge manning requirements.

(c) The pilot shall request such information from the master that a prudent pilot should request under the prevailing circumstances including, but not limited to:

1. The status of the vessel's navigation equipment;
2. The status and characteristics of the vessel's engine and steerage equipment;
3. The vessel's handling characteristics;
4. The vessel's compliance with Federal regulations, statutes and Captain of the Port's orders;

5. The drafts of the vessel; and
6. The location and currency of wheel house posters.

(d) If a pilot has a reasonable basis to believe that the vessel's intended passage cannot be conducted safely, the pilot shall:

1. Not undertake the piloting of the vessel;
2. Advise the master that the pilot will not pilot the vessel and describe the rationale for the decision;
3. If appropriate under the prevailing circumstance, offer to pilot the vessel to a safe anchorage; and
4. Request the master to enter the refusal, as well as the rationale for the decision, into the ship's log book.

(e) In the event the master, despite the pilot's advice to the contrary in (d) above, commences the passage or states an intention to commence the passage, the pilot shall:

1. Immediately report the situation, and the circumstances that caused the pilot's belief that the vessels' intended voyage cannot be conducted safely, to:

- i. The United States Coast Guard, Captain of the Port, by way of the most expeditious means available, including VHF and land line;
- ii. The Vessel Traffic Service, or their successors, on the most appropriate sector frequency or by land line; and
- iii. As soon as practical thereafter to the President of the Association and the Board; and

2. Advise the master that the pilot shall remain on the bridge as an observer only and not as a pilot. However, if the pilot, acting as an observer, notes the vessel is falling into danger, the pilot shall advise the master of the danger and give the master such advice, to the extent the pilot is able, as the master may require in a cooperative effort to extradite the vessel from the impending danger.

(f) Under (e) above, if an occurrence or accident follows, the Board shall take any special circumstances of the case into account when judging the performance of the pilot.

7:61-5.4 Illness

(a) A pilot who has been ill or injured to the extent that the pilot has been unable to perform pilotage duties for a period of 30 calendar days or longer shall:

1. Notify the Board, or arrange for it to be notified as soon as possible, after the 30th day of the disability; and
2. Not resume pilotage duties until the pilot has received the permission of the Board President, or the designated Commissioner, to return to work.

(b) A pilot applying for permission to return to work shall present to the Board President or designated Commissioner a statement from a physician indicating fitness for duty and a detailed evaluation of the pilot's physical condition.

(c) Before allowing the pilot to return to duty, the Board, the Board President or the designated Commissioner may require the pilot to:

1. Submit to an examination, at the Board's expense, by a Board selected physician;
2. Complete the observation trips as set forth in N.J.A.C. 7:61-5.5(c); and
3. Appear before the Board.

7:61-5.5 Route currency

(a) Prior to undertaking the piloting of a vessel, the pilot shall be fully conversant with the existing conditions of the pilotage route including, but not limited to:

1. Tidal and current conditions;
2. Status of aids to navigation;
3. Weather conditions; and
4. Obstructions, traffic conditions and changes since the pilot's last trip over the route.

(b) In the event a pilot has been absent from the performance of pilotage duty or it is anticipated that the pilot will be absent for a period of time in excess of 90 continuous days, for reasons other than illness or injury, the pilot shall notify the Board and the President of the Association in writing. The notice shall include the reasons for the absence and the date the pilot expects to resume pilotage duties.

(c) A pilot who has not performed pilotage duties for more than 90 continuous days shall, prior to resuming piloting activities, submit a written certification to the Board, with a copy to the Association, that the pilot is fully conversant with the conditions in (a) above. The Board may require the pilot to appear before the Board prior to resumption of piloting duties and may, at its discretion, condition the pilot's return to duty upon the completion of a specified number of observation trips over the routes the pilot will be piloting upon return to duty.

7:61-5.6 Occurrences

(a) Any pilot or apprentice who witnesses an occurrence or who is aboard a vessel involved in an occurrence shall:

1. Immediately after the occurrence, and as soon as the pilot's or apprentice's services are no longer needed, provide an oral report to the President of the Association or designee. The Association shall then immediately provide an oral report to the Board President or designee; and

2. Within 72 hours, provide the Board President or designee and the President of the Association or designee with a written report, in a form acceptable to the Board, which provides a detailed description of the occurrence.

(b) Any pilot or apprentice who is involved in or witnesses an occurrence may be required to appear before the Board.

(c) In addition, the Association shall promptly investigate any occurrence which occurs during the time a pilot licensed by the Board is on board a vessel involved in an occurrence and the occurrence results in one or more of the following:

1. Personal injury;
2. Property damage in excess of \$10,000;
3. A discharge of substance into the water;
4. Delay of the vessel;
5. A collision or allision; or
6. A grounding or touching of the bottom.

(d) After investigating an occurrence pursuant to (c) above, but not later than 30 calendar days after said occurrence, the Association shall, where relevant, obtain and deliver to the Board copies of the following:

1. Witness statements;
2. Log books (rough and smooth);
3. Printouts from course recorders, depth-measuring devices, and engine orders;
4. Position plots;
5. Photographs; and
6. Soundings.

(e) The Association, in its activities in (c) and (d) above, shall not be required to provide the Board with any opinions or conclusions of the Association or its investigators as to the culpability of a pilot licensed by this Board.

SUBCHAPTER 6. PENALTIES, ORDERS, AND HEARINGS

7:61-6.1 Scope

This subchapter sets forth the Board's procedures for the issuance of penalties and orders, and the conduct of hearings.

7:61-6.2 Investigations and penalties

(a) The Board or a designated Commissioner(s) may conduct an investigation of any occurrence or any matter

where there is a potential violation of this chapter or the Act.

(b) The Board may impose any of the penalties set forth in the Act, N.J.S.A. 12:8-1 et seq., or in this chapter.

7:61-6.3 Orders of the Board

(a) The Board may issue Orders to implement the Act or this chapter, or to ensure the better government of pilots. Orders may include, but are not limited to:

1. The requirement to appear at a meeting of the Board;
2. The requirement to appear before the Board at a show cause hearing conducted pursuant to N.J.A.C. 7:61-6.5;
3. The requirement to cease a specified activity or take a specified action;
4. The requirement to submit an oral statement or written report;
5. The requirement to provide written documents, log books, photographs, data, recorded material, or other objects; and
6. The requirement to immediately cease engagement in pilotage operations pursuant to N.J.A.C. 7:61-6.4(b).

(b) Any Order issued by the Board shall be delivered to the person named in the Order by personal service or by certified mail return receipt requested to the person's usual place of abode as it appears in the records of the Board. The Order shall specify the time and place for compliance with the Order.

7:61-6.4 Suspension, limitation, or revocation of a license

(a) The Board may suspend, limit, or revoke the license and/or the branch of a pilot for any one of the following grounds:

1. The pilot has violated N.J.S.A. 12:8-1 et seq., this chapter, or any Order issued by the Board;
2. The pilot has negligently lost any vessel under his or her care;
3. The pilot has a mental or physical condition that precludes proper piloting;
4. The pilot has failed to comply with the Rules of the Road;
5. The pilot has failed to comply with the United States Coast Guard Vessel Traffic Service Regulations or directives;
6. The pilot meets any of the grounds in N.J.A.C. 7:61-7.3 or 7.15; or
7. The pilot has failed to perform his or her piloting duties as a prudent pilot would under the prevailing circumstances.

(b) Where the Board deems it necessary, it may issue an Order immediately prohibiting the pilot from engaging in pilotage operations. Such an Order shall include the Board's grounds for its action and shall provide the pilot with an opportunity to appear at an adjudicatory hearing, in accordance with N.J.A.C. 7:61-6.6, within a reasonable time of the date of the Order.

(c) Before a pilot's license is limited, suspended, or revoked, unless it is done so pursuant to (b) above, the Board shall issue an Order of limitation, suspension or revocation which includes the Board's grounds for the action, the effective date of the action, and an opportunity for the pilot to request an adjudicatory hearing, pursuant to N.J.A.C. 7:61-6.6.

(d) After a branch or license is limited, suspended or revoked, the Board may request that the pilot surrender the license. Should the pilot fail to surrender the license, the Board shall publish a newspaper notice that states that the person no longer has the right to act as a pilot until reinstated by Order of the Board.

7:61-6.5 Show cause hearing

(a) The Board may issue an Order, in the form of a written notice, to appear before the Board or a designated Commissioner(s) at a show cause hearing.

(b) The written notice will include the following information:

1. The date, time and place where the person is required to appear;
2. To the extent it is appropriate, the Board's grounds for its proposed action; and
3. Where appropriate, that the person has the right to show cause why the Board's proposed action should not be taken.

(c) The written notice shall, at least 15 days before the show cause hearing, be delivered to the person:

1. By personal service; or
2. By certified mail return receipt requested to the person's usual place of abode as it appears in the records of the Board.

(d) A show cause hearing shall be conducted as follows:

1. The Board President, or the designated Commissioner(s), may administer an oath and the Board or the designated Commissioner(s) may examine any person;
2. The show cause hearing shall be an informal hearing and shall not be conducted in accordance with the adjudicatory hearing procedures set forth in N.J.A.C. 1:1. However, any person appearing at the show cause hearing shall have the right to testify, produce evidence and/or witnesses, bring an attorney or other representative approved by the Board under New Jersey Court Rule R. 1:21-1(e), and cross-examine any witnesses.

(e) The Board or designated Commissioner(s) shall give due consideration of the issues presented and may issue an Order regarding the matter. The Order shall specify the time frame for compliance with the Order.

7:61-6.6 Adjudicatory hearings

(a) Any person authorized to request an adjudicatory hearing in this chapter may request a hearing by written notice to the Board. The notice shall be postmarked no later than 30 calendar days after the receipt of the Board's action. The request for a hearing shall include:

1. The date the Board's action was received; and
2. A detailed statement of which factual findings or legal conclusions in the Board's action are being challenged and the basis for the challenged issues.

(b) The Board shall determine if the matter constitutes a contested case as defined in N.J.S.A. 52:14B-1 et seq.

(c) Where the Board determines that the matter constitutes a contested case, an adjudicatory hearing shall be conducted before the Board or, if the Board so directs, the matter shall be referred to the Office of Administrative Law for a hearing to be conducted in accordance with N.J.A.C. 1:1. Where the Board determines that the matter does not constitute a contested case, the Board's action shall be deemed final agency action.

(d) Where the Board conducts an adjudicatory hearing, the following process shall be used:

1. The hearing shall be conducted in accordance with the hearing procedures set forth in N.J.A.C. 1:1; and
2. After reviewing the issues presented, the Board shall issue a Final Decision in accordance with N.J.S.A. 52:14B-1 et seq.

(e) If the Office of Administrative Law conducts the adjudicatory hearing, the Board shall issue a Final Decision adopting, rejecting, or modifying the Initial Decision in accordance with N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 7. DRUG FREE WORKSHOP PROGRAM

7:61-7.1 Scope

(a) The purpose of this subchapter is to maintain a drug and alcohol-free workplace. This subchapter prohibits the use or possession of dangerous drugs by a licensed pilot or registered apprentice whether on duty, subject to being called on duty, or off duty.

(b) This subchapter also prohibits the use of alcohol by a licensed pilot or registered apprentice whether on duty or subject to being called on duty, or during an eight-hour period prior to being on duty or subject to being called on duty.

7:61-7.2 Definitions

The following words and terms, when used in this subchapter, shall 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 a beverage, mixture, or preparation containing ethyl alcohol.

“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 scientifically recognized test which analyzes an individual’s breath, blood, urine, for evidence of 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 criminal drug statutes or driving under the influence in violation of a motor vehicle statute.

“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.

“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.

“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” or “MRO” means a licensed physician designated by the Association to carry out the duties specified by this subchapter and who meets the qualifications of 49 C.F.R. 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 dangerous drugs or drug metabolites in an individual’s system after a Medical Review Officer’s review.

“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.

“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.

7:61-7.3 Prohibitions

(a) No pilot or apprentice shall:

1. Use, possess, manufacture, distribute, sell, or dispense dangerous drugs at any time when on duty or off duty, except as set forth in N.J.A.C. 7:61-7.4;
2. Consume alcohol on duty or subject to being called on duty, or during an eight 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 subject to being called on duty, or during an eight hour period prior to 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; or
5. Violate any 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 chapter.

7:61-7.4 Use of prescribed dangerous drugs

(a) Possession and/or use of dangerous drugs by a pilot or apprentice are permitted if:

1. The drugs are specifically prescribed by a physician; and
2. The drug is being used at the prescribed dosage; and
3. The drug is in the original container that is clearly labeled with the pilot or apprentice’s name, the name of

the drug, and the prescribing physician's Federal Drug Enforcement Administration number.

(b) Prior to use of the drug while on duty or subject to being called to duty:

1. The pilot or apprentice shall provide the Medical Review Officer (MRO) and the Association with:

i. A written certification from a physician that 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, provided by the Board, of the assigned duties, and that the physician provided advice that the use of the drug at the prescribed dosage is consistent with the safe performance of the assigned duties;

ii. A written and sworn certification by the pilot or apprentice that the drug is in the original container which is 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 the drug shall be used at the prescribed dosage; and

2. The MRO shall make a determination as to whether the use of the drug at the prescribed dosage is consistent with the safe performance of the pilot or apprentice's assigned duties. The MRO shall inform the pilot or apprentice and the Association of the pilot's approval, conditional approval, or disapproval of the use of the prescribed drug within 24 hours after receipt of the certification in (b)1 above.

7:61-7.5 Implied consent: cooperation with collection, testing, and record review

(a) Pilots or apprentices required to be tested for dangerous drugs and/or alcohol pursuant to this subchapter shall:

1. Provide complete, valid, undiluted, and unadulterated breath, urine, or blood samples as requested;

2. Supply all information requested by the laboratory;

3. Cooperate with all collection and testing procedures implemented pursuant to this subchapter; and

4. Provide the Board with written authorization to procure for its review arrest or conviction records.

(b) The Association shall be notified immediately if a pilot or apprentice fails to comply or cooperate with collection site personnel or any collection or testing procedures in this subchapter. The Association shall not assign a pilot or apprentice to any duties and immediately inform the Board of any such failure.

(c) Any failure to comply or cooperate as set forth in (b) above shall subject a pilot or apprentice to penalties, including suspension and/or license revocation, pursuant to N.J.S.A. 12:8-19 and this chapter.

7:61-7.6 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 chemical drug tests for dangerous drugs shall be unannounced, but shall occur within the month prior to registration. Notice of the specific date of chemical drug tests 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.

7:61-7.7 Random testing

(a) The Association shall maintain a program for the chemical drug testing of pilots and apprentices for dangerous drugs.

(b) The program shall include a random selection element so 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 the chance of selection continues to exist throughout a pilot's membership or an apprentice's employment. Therefore, pilots or apprentices randomly selected shall 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 so far in advance as is necessary to ensure the individual's presence at the time and place set for testing.

(d) The Association shall ensure that, during each calendar year, 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.

7:61-7.8 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 or alcohol to submit to a chemical drug test for dangerous drugs and alcohol.

(b) The Association's decision to test shall 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, behavior, or performance indicators of probable use. Where practicable, this belief should be based on the observation of the pilot or apprentice by two Sandy Hook pilots.

(c) Any Sandy Hook pilot or apprentice who entertains a reasonable belief, as set forth in (b) above, 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 President or member of the Executive Committee of the Association is made aware of a reasonable belief.

(d) In all cases where an individual is required to be tested pursuant to (a) above, a written report shall be made which:

1. Includes the facts upon which the reasonable belief is based, including the specific, contemporaneous physical, behavioral, or performance indicators of probable use of dangerous drugs or alcohol;
2. Is signed by the Sandy Hook pilots in (c) above and the President or member of the Executive Committee of the Association; and
3. Is submitted to the Board within 72 hours of the administering of the chemical drug test.

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

7:61-7.9 Post-occurrence testing

(a) A pilot or apprentice shall submit to a post-occurrence chemical drug test for dangerous drugs and alcohol if he or she is involved in an occurrence, except nothing herein shall apply to pilot or apprentice who is only a witness to an occurrence.

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

(c) Any pilot or apprentice required to undergo post-occurrence 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.

7:61-7.10 Drug testing procedures

(a) This chapter incorporates by reference the Federal procedures for transportation testing set forth at 49 C.F.R. 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 shall be consulted to determine the

specific procedures that shall be established and utilized by the Association in carrying out its drug testing program.

(b) 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, as follows.

1. Preparation for testing and specimen collection shall be conducted in accordance with 49 C.F.R. 40.23 and 40.25;
2. The testing laboratory personnel shall meet all requirements at 49 C.F.R. 40.27;
3. The testing laboratory analysis procedures shall be those required by 49 C.F.R. 40.29;
4. The testing laboratory quality assurance and quality control procedures shall be those required by 49 C.F.R. 40.31; and
5. The testing laboratory shall meet all requirements at 49 C.F.R. 40.39.

7:61-7.11 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 percent blood alcohol level (BAC) level.

(c) The BreathScan screening shall be performed by personnel employed by the drug testing facility with which the Association contracts pursuant to N.J.A.C. 7:61-7.16.

(d) The testing by and maintenance of the BreathScan units shall 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 0.04 percent level shall 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 the 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 shall be collected, tested, and reported under the 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. 7:61-7.16.

(f) A pilot or apprentice shall be deemed to have tested positive for alcohol if the confirming blood test shows a level that meets the definition of a positive alcohol test.

7:61-7.12 Verification by the Medical Review Officer

(a) The Association shall designate a Medical Review Officer (MRO) meeting the qualifications of 49 C.F.R. 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 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 immediately 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 or his designees.

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

(f) The Association shall not assign duties to a pilot or apprentice for whom there was a verified positive test until further ordered by the Board.

7:61-7.13 Protection of 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 tests 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:

1. The context of a hearing before the Board arising from a verified positive chemical drug test;
2. A lawsuit, grievance, or other proceeding arising from a verified positive chemical drug test; or

3. Where the Board determines that the release of the information is appropriate and shall further the protection of public health and safety.

(d) The laboratory and the MRO shall disclose information related to a positive chemical drug test of an individual only to the individual, the Association, the Board, or decision maker 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.

7:61-7.14 Notice of criminal or Coast Guard charges and convictions

(a) All pilots and apprentices 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 or being convicted under:

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

(b) Immediately after receipt of written notification of conviction or charge, the Association shall provide written notification of such conviction or charge 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 to submit to a chemical drug test 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.

(d) No pilot or apprentice shall be assigned duties aboard a vessel pending the outcome of the test or tests required by (c) above.

(e) The outcome of the test(s) required in (c) above shall be promptly reported to the Board by the Association.

(f) The Board may from time to time cause a search of applicable motor vehicle and criminal records to determine if a pilot or apprentice has been charged or convicted of any offense which would oblige the pilot or apprentice to give notice pursuant to (a) above.

7:61-7.15 Penalties

(a) Any pilot who violates either of the prohibitions in N.J.A.C. 7:61-7.3(a)2 or 3 shall immediately be prohibited from engaging in pilotage operations pursuant to N.J.A.C. 7:61-6.4(b) and may, after opportunity for an adjudicatory hearing pursuant to N.J.A.C. 7:61-6.6:

1. For the first offense:
 - i. Forfeit the pilotage fee for the pilotage operations performed while intoxicated;
 - ii. Be suspended 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 violates either of the prohibitions in N.J.A.C. 7:61-7.3(a)2 or 3 shall immediately be prohibited from engaging in pilotage operations and may, after opportunity for a show cause hearing pursuant to N.J.A.C. 7:61-2.5, be suspended or 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 second conviction under any state statute for operating while under the influence or operating while intoxicated; or who violates any other provision of this subchapter shall immediately be prohibited from engaging in pilotage operations and may, after opportunity for a hearing pursuant to N.J.A.C. 7:61-6.4(c) (for pilots) or N.J.A.C. 7:61-2.5 (for apprentices), 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 the hearing before the Board shall be returned to normal duties.

(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 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/or alcohol at the pilot's or apprentice's expense for a period as determined by the Board.

7:61-7.16 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 a MRO, and subsequent facilities and MROs as necessary, 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 agreement(s) or contract(s) in (a) above shall provide that the testing facility and MRO:

1. Cooperate with the Board including agreement to provide documents and competent testimony; and
2. Comply with the requirements of this subchapter including confidentiality and the production of reports, documents, and competent witnesses.

(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 and amended procedures for the implementation of this subchapter and copies of the agreement(s) or contract(s) in (a) above to the Board for review and approval.