

**BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF
SAN FRANCISCO, SAN PABLO, AND SUISUN**

EXPRESS TERMS

Title 7, Harbors and Navigation
Division 2. State Board of Pilot Commissioners for the Bays of
San Francisco, San Pablo and Suisun
Article 5. Licensing

The proposed amendments to existing text are shown in underline to indicate additions and ~~strikeout~~ to show deletions. All other text remains unchanged.

Amend Section 202 of Title 7, California Code of Regulations to read as follows:

§ 202. Other Definitions.

(a) "719K form" means the ~~Merchant Mariner Credential Medical Evaluation Report~~ Application for Medical Certificate, Form CG-719K Rev. (04/17), which is hereby incorporated by reference, issued by the U.S. Department of Homeland Security, U.S. Coast Guard.

(b) "Bays of San Francisco, San Pablo, and Suisun" means all the waters of those bays and of the tributaries, ports and harbors of those bays, and includes the water areas from the south end of San Francisco Bay and from the Ports of Sacramento and Stockton to the Golden Gate Bridge.

(c) "Board-appointed physician" means a physician who has been appointed by the Board as either an examining physician or a Medical Review Officer.

(d) "Certificate of completion" means the certificate given by the Board to a pilot trainee notifying the trainee that he or she has successfully completed the training program.

(e) "Chemical test" means a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drug or alcohol use.

(f) "Conflict of interest code" means those provisions in Section 222 which define conflicts of interest for licensees of the Board.

(g) "Conflict of interest code of the Board" means those provisions in Section 212.5 which define conflicts of interest for designated employees of the Board.

(h) "Dangerous drug" means a narcotic drug, a controlled substance, marihuana, or a controlled-substance analogue (as defined in Section 102 of the federal Comprehensive Drug Abuse and Control Act of 1970 (Title 21, U.S. Code, Section 802)).

(i) "Examining physician" means a physician who meets the eligibility requirements of Section 217.45(b) and has been appointed by the Board to perform the duties of an examining physician that are set forth in these regulations.

(j) "Executive Director" means the individual appointed by the Board pursuant to Section 211.

(k) “Fails a chemical test for dangerous drugs” means that the result of a chemical test conducted in accordance with Title 49, Code of Federal Regulations, Part 40 is verified as “positive” for the presence of dangerous drugs or drug metabolites in an individual's system and reported in accordance with that part.

(l) “Fitness evaluation” means an evaluation by Board-appointed physicians to determine whether pilot trainees and pilots are mentally and physically fit to perform their duties. A fitness evaluation may but does not necessarily include the “medical assessment” described in Section 217.15.

~~(m)~~(m) “Investigator” means a person employed by or under contract with the Board and assigned to investigate a navigational incident involving a vessel piloted by a pilot licensed by the Board, or any other matter for which a pilot's license may be revoked or suspended pursuant to these regulations, including a possible conflict of interest as set forth in Section 222, or to investigate reports of suspected pilot ladder or pilot hoist safety violations.

~~(n)~~(n) “Medical assessment” means the comprehensive physical and medical evaluation process described in Section 217.15.

~~(o)~~(o) “Medical Review Officer” means a physician who meets the eligibility requirements of Section 217.45(c) and has been appointed by the Board to perform the duties of a Medical Review Officer that are set forth in these regulations.

(p) “Merchant Mariner Medical Manual” means the Merchant Mariner Medical Manual (August 2019) (COMDTINST M16721.48), issued by the U.S. Coast Guard.

~~(q)~~(q) “Monterey Bay” means all the waters of that bay and of the tributaries, ports and harbors of that bay.

~~(r)~~ “NVIC 04-08” means ~~Navigation and Vessel Inspection Circular NVIC 04-08, Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials, issued by the U.S. Coast Guard, dated September 15, 2008.~~

~~(r)~~(r) “Pilot” means an individual licensed as a pilot by the Board.

~~(s)~~(s) “Pilot Evaluation Committee” means the committee appointed by the Board pursuant to Section 209.

~~(t)~~(t) “Pilot trainee” or “trainee” means a person who is training as a pilot in the pilot trainee training program established by the Board.

~~(u)~~(u) “Pilotage grounds” means all waters extending eastward from the precautionary area surrounding buoy SF to, and including, the Bays of San Francisco, San Pablo and Suisun, and also includes the waters of Monterey Bay, eastward of a straight line drawn between Point Santa Cruz Light and Point Pinos Light.

~~(v)~~(v) “Portable Pilot Unit” means a portable, computer-based system that a pilot brings on board a vessel to use as a decision/support tool for navigating in confined waters.

~~(w)~~(w) “Port Agent” means the individual identified in Section 218.

~~(x)~~(x) “Serious Marine Incident” means an event or events that meet the definition of “Serious Marine Incident” under Title 46, Code of Federal Regulations, Section 4.03-2.

~~(y)~~(y) “Training program” or “Program” means the standards and procedures for training pilots and pilot trainees adopted by the Board as contained in Sections 214 and 215.

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101(e), 1101(h), 1110, 1113, 1114, 1114.5, 1154, 1156, 1156.5, 1156.6, 1170.3, 1171.5, 1176, 1176.5, 1180, 1180.3 and 1181, Harbors and Navigation Code; Title 21, U.S. Code, Section 802; Title

46, Code of Federal Regulations, Sections 4.03-2, 97.90-1 and 108.719, subparts 163.002 and 163.003, and Part 16; and Title 49, Code of Federal Regulations, Part 40.

Amend Section 217 of Title 7, California Code of Regulations to read as follows:

§ 217. Purpose of Fitness Regulations.

(a) The purpose of this regulation is to ensure that pilots and pilot trainees are mentally and physically ~~and mentally~~ fit to perform their duties. To achieve this purpose, persons subject to a fitness ~~determination~~ evaluation must disclose all information relevant to their fitness to perform their duties. In addition, personal health care professionals, Board-appointed physicians, and other health care professionals must be free to share with one another all information relevant to a fitness ~~determination~~ evaluation. This regulation provides for the full disclosure and sharing of information that is essential to an effective program for the ~~determination~~ evaluation of fitness for duty.

(b) Health information of persons subject to a fitness ~~determination~~ evaluation will be shared among Board-appointed physicians, personal health care professionals, other health care professionals, and, when necessary to Board processes set forth in the Board's regulations, with members of the Board, the Executive Director, and Board counsel. These Board processes include reported absences from duty for medical reasons, appeals of fitness determinations, review of disability pension applications, and consideration of actions under Sections 1180 through 1183 of the Code.

(c) When, to complete a fitness ~~determination~~ evaluation, a Board-appointed physician needs health information regarding the person being ~~assessed~~ evaluated ~~from that person or from~~ another health care professional, including medical records, examination results, results of diagnostic and laboratory tests, and consultations, it is ~~that person's~~ the responsibility of the person being evaluated to provide, or arrange for provision of, the needed information to the Board-appointed physician. Absent provision of such information, ~~that~~ the person being evaluated will be determined not fit for duty.

(d) The fitness ~~determinations~~ evaluations required by this article are solely to assess ~~evaluate~~ the fitness of persons to perform the duties of pilots or pilot trainees. The Board-appointed physicians who conduct these ~~assessments~~ evaluations do not provide medical care or treatment to the persons ~~assessed~~ evaluated.

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3, 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Amend Section 217.5 of Title 7, California Code of Regulations to read as follows:

§ 217.5. Duty to Submit to Medical Assessment; Overall Standards.

Note: *See Executive Order N-52-20 (2019 CA EO 52-20), issued in response to the COVID-19 pandemic, which temporarily waives certain pilot license renewal requirements.*

(a) A person applying for an original pilot license, applying for renewal of a pilot license, or holding a pilot license and who is directed to do so shall undergo a medical assessment to determine whether the person is mentally and physically fit to perform the duties of a pilot. A pilot license shall not be issued or renewed unless the person applying for that license or renewal

successfully completes a medical assessment and is determined to be fit for duty as described in this article.

(b)(1) A person who has accepted a position in the pilot trainee training program and a pilot trainee shall undergo a medical assessment to determine whether the person is mentally and physically fit to perform the duties of a pilot trainee.

(2) A person offered a position in the pilot trainee training program shall have 20 days from acceptance of the offer of a position in the program to ~~obtain a fitness determination by undergoing~~ arrange for commencement of a medical assessment by a Board-appointed physician; ~~provided, however, that the Executive Director, for good cause shown, may extend this period for up to 90 days.~~

(3) A person shall not be admitted into the pilot trainee training program and shall not be allowed to continue the training unless the person successfully completes a medical assessment and is determined to be a fit for duty as described in this article.

(c) All fitness ~~determinations~~ evaluations, including medical assessments, shall, except as otherwise provided herein, be made by both an examining physician and the Medical Review Officer, as described in this article. The Board shall maintain a list of the Board-appointed physicians who conduct fitness ~~determinations~~ evaluations.

(d) The fitness ~~determinations~~ evaluations described in this article shall be conducted in accordance with the provisions of the Code, the regulations in this article, and the guidelines guidance set forth in ~~NVIC 04-08 (September 15, 2008)~~ the Merchant Mariner Medical Manual, which is hereby incorporated by reference, and a copy of which shall be on file in the Board's office.

(e) Except as otherwise provided in this article, the costs of the fitness ~~determinations~~ evaluations required by the Code and these regulations shall be borne exclusively by the Board. Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Amend Section 217.10 of Title 7, California Code of Regulations to read as follows:

§ 217.10. Events Requiring, and Timing of, Medical Assessments.

Note: See Executive Order N-52-20 (2019 CA EO 52-20), issued in response to the COVID-19 pandemic, which temporarily waives certain pilot license renewal requirements.

(a) A medical assessment of persons subject to a fitness ~~determination~~ evaluation shall be commenced by a Board-appointed physician and completed:

(1) ~~upon acceptance of a position~~ within 90 days prior to entry into the pilot trainee training program, unless the Executive Director, for good cause shown, increases the period for not to exceed 30 days;

(2) ~~upon application for~~ within 90 days prior to issuance of an original pilot license, unless a medical assessment of the trainee has been commenced by a Board-appointed physician and completed within 90 days prior to licensure;

(3) ~~upon application for the~~ within 90 days prior to renewal of a pilot license unless a medical assessment of the pilot has been commenced by a Board-appointed physician and completed within 90 days prior to license renewal;

(4) as a pilot trainee, annually, within 90 days prior to the anniversary of the trainee's ~~admission~~ entry into the pilot trainee training program, unless a medical assessment of the trainee has been commenced by a Board-appointed physician and completed within 90 days prior to the trainee's next anniversary;

(5) upon direction by a Board-appointed physician, within 90 days prior to returning to pilot or pilot trainee duty after an absence from duty for medical reasons that continued for either 30 consecutive days or a total of 30 days in any 60-day period;

(6) upon direction by a Board-appointed physician following referral by the Executive Director or the Board under Section 217.30;

(7) upon direction by a Board-appointed physician following receipt of a notice from the pilot or pilot trainee of changes in the person's medication or medical condition; and

(8) upon direction by a Board-appointed physician following receipt of correspondence from the U.S. Coast Guard concerning a pilot's medical condition and right to act under the authority of the pilot endorsement to the federal merchant mariner credential.

(b) ~~At~~ A medical assessment may not be required in all instances to make a fitness evaluation under subsections (a)(5), (a)(6), (a)(7), or (a)(8). The need for a medical assessment will be at the discretion of the examining physician, subject to review by the Medical Review Officer, as provided is described in Section 217.25; ~~a medical assessment may not be required in all instances under subsections (a)(5), (a)(6), (a)(7), and (a)(8).~~

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Amend Section 217.15 of Title 7, California Code of Regulations to read as follows:

§ 217.15. Fitness Evaluation; Description of Medical Assessment; Detailed Standards.

(a) A medical assessment shall consist of a comprehensive physical and medical evaluation process, to include, at minimum, a document review, a thorough physical examination, an agility test (subject to the exceptions listed in subsection (d)(1)), a toxicological test, a review of prescribed medications, and an evaluation by the Medical Review Officer as provided by this section.

(b) A person required by this article to undergo a medical assessment shall provide documents to an examining physician as part of the medical assessment.

(1) The following documents shall be submitted within 30 days prior to the physical examination:

(A) the 719K form most recently completed for the applicant, all supporting documentation for medical conditions and medications requiring further review or waiver under the ~~guidelines~~ guidance set forth in ~~NVIC 04-08~~ the Merchant Mariner Medical Manual, and, as soon as available, any correspondence from the U.S. Coast Guard concerning the person's right to act under the authority of the pilot endorsement to the federal merchant mariner credential, including all waivers issued by the U.S. Coast Guard, with the exception of waivers previously provided to an examining physician;

(B) a complete list of prescribed medications;

(C) a complete list of prescribed durable medical equipment;

(D) a signed Disclosure of Information form (Version ~~March 28, 2013~~ September 21, 2020), hereby incorporated by reference, setting forth any information required by Section 1176.5(a) and (b) of the Code; and

(E) upon the initial medical assessment of a pilot trainee and of an applicant for an original pilot license, and upon the annual medical assessment of both thereafter, a signed Notice, Disclosures, and Acknowledgment and Consent to Disclosure form (Version ~~March 28, 2013~~ September 21, 2020), hereby incorporated by reference, that (1) acknowledges having read the notice required under the Information Practices Act of 1977 and the disclosures concerning the nature and use of the health information obtained in the course of fitness ~~determinations~~ evaluations, and (2) consents to the disclosure of that information in connection with the fitness ~~determinations~~ evaluations and Board processes requiring review of the information.

(2) ~~With the exception of the document required by subsection (b)(1)(E), submission~~ Submission of these documents shall be required each time a person is subject to a medical assessment to ~~determine~~ evaluate fitness for duty.

(3) The document review shall be conducted by an examining physician, and the results shall be used to ~~make a determination of~~ evaluate the fitness of the ~~for duty, person subject to the~~ medical assessment. ~~The documents shall also be reviewed by the Medical Review Officer, and shall also, unless otherwise provided herein, be used by the Medical Review Officer to make an independent~~ determination evaluation of fitness for duty.

(c) The physical examination shall be conducted by an examining physician and shall include evaluation of general patient appearance, behavior, and organ systems.

(1) Completion of the physical examination shall be required upon any of the events listed in subsections (a)(1) through (a)(4) of Section 217.10 and upon direction by a Board-appointed physician under Section 217.25(a).

(2) The physical examination shall be conducted by an examining physician chosen by the person subject to such examination unless otherwise directed by the Executive Director or the Medical Review Officer.

(3) The results of the physical examination shall be used by the examining physician to ~~make a determination~~ evaluate of fitness for duty, ~~and shall also be reviewed by the Medical Review Officer, and shall also, unless otherwise provided herein, be used by the Medical Review Officer to make an independent~~ determination evaluation of fitness for duty.

(d) The agility test shall simulate the physical demands of piloting and shall include the following observations: balance, pilot ladder circuit climb, stair climbing, floor to waist lifts, a single rope slide, and heart rate recovery after activity.

(1) Completion of an agility test shall be required ~~upon acceptance of a position in~~ within 90 days prior to entry into the pilot trainee training program, unless the Executive Director, for good cause shown, increases the time for not to exceed 30 days; and biennially thereafter, unless the trainee has completed an agility test with 90 days prior to the next biennial test; upon application for within 90 days prior to issuance of an original pilot license and biennially thereafter, unless the trainee has completed an agility test within 90 days prior to licensure or a pilot seeking license renewal has completed an agility test within 90 days prior to license renewal; and upon direction of a Board-appointed physician under Section 217.25(a).

(2) The agility test shall be conducted by a tester who is a personal trainer, physiotherapist, occupational therapist, or kinesiologist and who is acting under the direction of a Board-appointed physician.

(3) The results of the agility test shall be reviewed by the examining physician as part of the review to ~~make a determination~~ evaluate of fitness for duty, ~~and shall also be reviewed by the Medical Review Officer, and shall also, unless otherwise provided herein, be used by the Medical Review Officer~~ to make an independent ~~determination~~ evaluation of fitness for duty.

(e) The toxicological test shall include the U.S. Department of Transportation tests for dangerous drugs, and also tests for the presence of anti-depressants, anti-psychotics, anti-convulsants, barbiturates, amphetamines, benzodiazepines, sedative hypnotics, and opiates contained in pain medication.

(1) Completion of the toxicological test shall be required upon any of the events listed in subsections (a)(1) through (a)(4) of Section 217.10, upon direction by a Board-appointed physician under Section 217.25(a), and as directed by the Port Agent under subsections (g) or (h) of Section 218.

(2) The toxicological test shall be conducted by a laboratory certified by the U.S. Department of Health and Human Services and selected by the Medical Review Officer.

(3) The results of the toxicological test shall be reviewed by the examining physician as part of the review to ~~make a determination of~~ evaluate fitness for duty, ~~and shall also be reviewed by the Medical Review Officer, and shall also, unless otherwise provided herein, be used by the Medical Review Officer~~ to make an independent ~~determination~~ evaluation of fitness for duty.

(f) ~~The~~ Except as provided in subsection (f)(2) below, the medical assessment shall be concluded by the issuance of statements of fitness for duty by each of the Board-appointed physicians involved. These statements shall be submitted on the Statement of Fitness for Duty form (Version ~~March 28, 2013~~ September 21, 2020), hereby incorporated by reference.

(1) At the conclusion of the medical assessment, the examining physician shall make a determination of fitness for duty of the person subject to the medical assessment and shall issue a statement of fitness for duty accordingly.

(2) The medical information compiled during the medical assessment and the fitness ~~determination~~ evaluation made by the examining physician shall be reviewed by the Medical Review Officer. Except in situations in which the examining physician's determination is Not Fit for Duty, the ~~The~~ Medical Review Officer shall make an independent ~~determination~~ evaluation of fitness for duty of the person subject to the medical assessment, ~~and shall complete a statement of fitness for duty accordingly, and shall~~ ~~The Medical Review Officer shall also~~ indicate whether the Medical Review Officer concurs with the fitness determination made by the examining physician.

(g) ~~At~~ Except in situations in which the examining physician's determination is Not Fit for Duty, in which case only the examining physician must submit a Statement of Fitness for Duty form, at the conclusion of their respective roles both in the a medical assessment and in fitness evaluations generally, both the examining physician and the Medical Review Officer shall provide the results of their respective ~~determinations~~ evaluations to the Executive Director by stating, on a Statement of Fitness for Duty form, one of the following possible determinations:

(1) Fit for Duty (-"FFD"), which shall signify that the person ~~examined~~ evaluated is mentally and physically qualified for duty as a pilot or pilot trainee. That determination shall be effective until the next event for which a medical assessment is required under Section 217.10(a), unless the FFD determination is made effective for a shorter period.

(2) Not Fit for Duty (“NFFD”), which shall signify that the person ~~examined~~ evaluated is mentally or physically unqualified for duty as a pilot or pilot trainee.

(h) In the case of nonconcurrency between the examining physician and the Medical Review Officer, the final determination of fitness for duty shall be NFFD in situations in which one of the determinations is NFFD. In situations in which the FFD determinations are for different periods, the FFD determination shall be for the shorter period.

(i) The completed Statement of Fitness for Duty shall be submitted to the Executive Director. The Executive Director shall acknowledge receipt of a Statement of Fitness for Duty form by recording the final determination and notifying the pilot, trainee, or applicant of the fitness determination, using the Fitness for Duty Notification form (Version ~~March 28, 2013~~ September 21, 2020), hereby incorporated by reference.

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Amend Section 217.20 of Title 7, California Code of Regulations to read as follows:

§ 217.20. Duty to Report Medical Information.

(a) Persons subject to fitness ~~determinations~~ evaluations under this article shall submit notices to the examining physician who conducted the previous physical examination of the person or, if unavailable, to the Medical Review Officer upon the following events and in the following manner:

(1) Within 10 days of the prescription of either a new dosage of a medication or a new medication to the person, a written notice describing the medication change.

(2) Within 10 days of the suspension or interruption of use of a prescribed medication to the person, a written notice describing the medication and date of suspension or interruption of use.

(3) Upon the diagnosis by a physician of a medical condition that is listed in the 719K form, a written notice describing the medical condition and date of diagnosis.

(4) Upon receipt of correspondence from the U.S. Coast Guard concerning the person's medical condition and right to act under the authority of the pilot endorsement to the federal merchant mariner credential, a written notice with copies of all correspondence attached.

(5) Upon any change in medical condition that may impair the ability of the individual to conduct the duties of a pilot or pilot trainee, a written notice describing the change.

(6) After being absent from duty for medical reasons for a period of 30 consecutive days or for a total of 30 days in a 60-day period, a written notice describing the medical condition causing the absence.

(b) Notices to a Board-appointed physician must include supporting information, such as a statement from a physician providing care for the pilot or pilot trainee, diagnostic information, prescriptions for medications or durable medical equipment, consultations, and any other information as outlined in the guidelines of ~~NVIC 04-08~~ the Merchant Mariner Medical Manual. Such notices shall be submitted using the Notice to Board-Appointed Physician form (Version ~~March 28, 2013~~ September 21, 2020), hereby incorporated by reference.

(c) Upon submission of a written notice to a Board-appointed physician under subsection (a), the person submitting the notice shall also simultaneously submit a written notice to the

Executive Director, providing notification of the reason for the notice to a Board-appointed physician. The notice to the Executive Director shall be submitted using the Notice to Executive Director form (Version ~~March 28, 2013~~ September 21, 2020), hereby incorporated by reference. This notice ~~need~~ should not include the supporting information that is provided with the notice to a Board-appointed physician under subsection (b).

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3, 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Amend Section 217.25 of Title 7, California Code of Regulations to read as follows:

§ 217.25. Fitness ~~Determination~~ Evaluation by Board-Appointed Physicians Following Receipt of Medical Information.

(a) Upon receipt of medical information reported under Section 217.20, or upon referral by the Medical Review Officer under Section 217.30, the examining physician who conducted the person's most recent medical assessment, or such other examining physician as the ~~Executive Director and Medical Review Officer may jointly specify~~ specifies, shall evaluate the information and decide what is necessary to ~~make a determination~~ perform an evaluation of fitness for duty. The medical assessment provided for in Section 217.15 may not be necessary in all cases. Depending on the nature and extent of the information received, the examining physician may:

(1) ~~make perform~~ perform a fitness ~~determination~~ evaluation on the basis of the medical information received;

(2) ~~make perform~~ perform a fitness ~~determination~~ evaluation after conducting an additional inquiry consisting of any elements deemed necessary, including consultations, testing, clinical investigations, or review of medical records; or

(3) direct that a new medical assessment be conducted in accordance with Section 217.15.

(b) The Medical Review Officer shall review the examining physician's decision. ~~and Unless the examining physician's determination is Not Fit for Duty, the Medical Review Officer shall make an independent determination evaluation whether additional inquiry or a medical assessment is necessary. If so, an additional evaluation that includes the elements identified by the Medical Review Officer shall be performed.~~

(c) Upon completion of the fitness ~~determination~~ evaluation, except as otherwise provided herein, both the examining physician and the Medical Review Officer shall complete a Statement of Fitness for Duty form (Version ~~March 28, 2013~~ September 21, 2020), hereby incorporated by reference.

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3, 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Amend Section 217.30 of Title 7, California Code of Regulations to read as follows:

§ 217.30. Board-Initiated Fitness ~~Determination~~ Evaluation.

(a) If the Board or Board staff obtains information from a source other than a Board-appointed physician that provides a reasonable basis for concluding that a pilot or pilot trainee may have become unfit to perform the duties of a pilot or pilot trainee, the Board or the Executive Director shall refer the matter to the Medical Review Officer for evaluation by an examining physician in accordance with Section 217.25(a). The referral shall be in writing and shall set forth in detail the information that led to the referral. The Executive Director may order the pilot or pilot trainee to cease performing pilot or pilot trainee duties until the pilot or pilot trainee is determined FFD.

(b) A pilot whose license has been temporarily suspended by the Board in accordance with Section 1180 of the Code due to issues of fitness to perform the duties of a pilot shall submit to a fitness ~~determination~~ evaluation within the period of the suspension.

(c) A pilot's or pilot trainee's failure to submit to a fitness ~~determination~~ evaluation required under either subsection (a) or (b) may be considered by the Board as evidence sufficient to warrant a finding that the pilot or pilot trainee is NFFD.

(d) The Executive Director or the Medical Review Officer may direct that the fitness ~~determination~~ evaluation required by this section be performed by a specific examining physician.

(e) Upon being notified that a pilot or trainee has undergone post-incident drug and alcohol tests, the Board shall direct a request to a Board-appointed physician for review and response concerning the test results. For this purpose, the Board shall use the Notice of Post-Incident Drug Test (Version September 24, 2020), hereby incorporated by reference. The form shall provide for a response by the examining physician that indicates whether the test results were positive for any of the drugs referenced in Section 217.15(e) or indicated a blood-alcohol concentration of more than 0.0 percent. If so, the physician shall complete the form by requesting the Executive Director to refer the pilot or trainee to the Medical Review Officer under subsection (a).

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3, 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Amend Section 217.35 of Title 7, California Code of Regulations to read as follows:

§ 217.35. Consequences of Not Fit for Duty Determination.

(a) If a Board-appointed physician determines that a pilot or an applicant for renewal of a pilot license is NFFD, the Executive Director shall immediately place the pilot or applicant on medical disability leave and notify the person in writing that he or she has been placed on medical disability leave. Regarding an applicant for renewal of a pilot license, the Executive Director shall also notify the applicant of the nonrenewal of the license. A pilot or applicant who has been placed on medical disability leave shall not exercise any of the duties of a pilot until determined to be FFD in accordance with this article and the Executive Director notifies the person in writing that the medical disability leave is terminated. If a pilot license expires during medical disability leave, the application period for renewal is tolled and the holder of the expired

license may commence application for renewal within 30 days after the termination of the medical disability leave.

(b) If a Board-appointed physician determines that a pilot trainee is NFFD, the Executive Director shall immediately notify the trainee in writing either that the trainee is terminated from the pilot trainee training program or that the trainee is placed on leave from the program for a maximum period of one year, subject to attaining FFD status within that period. A pilot trainee who has been placed on leave from the program shall not participate in the program until determined to be FFD in accordance with this article and the Executive Director notifies the trainee in writing that the leave from the program is terminated.

(c) If a Board-appointed physician determines that an applicant for an original pilot license is NFFD, the Executive Director shall immediately notify the applicant in writing either that the application is denied or that consideration of the application is suspended for a maximum period of one year, subject to attaining FFD status within that period. A suspended application shall not be subject to consideration until the applicant is determined to be FFD in accordance with this article and the Executive Director notifies the applicant in writing that the application is again subject to consideration.

(d) If a Board-appointed physician determines that a person who has been offered a position in the training program is NFFD, the Executive Director shall notify the applicant in writing that his or her application has been denied without prejudice to future consideration for a position in the training program and that the applicant's position on the eligibility list will remain unaffected. The person shall not again be eligible for consideration for a position in the training program until determined to be FFD in accordance with this article and the Executive Director notifies the person in writing that he or she is again subject to consideration for future openings in the training program.

(e) Notifications by the Executive Director concerning fitness determinations shall be sent to the mailing address of the recipient on file with the Board and also shall be sent by electronic mail to the e-mail address, if any, designated by the recipient and on file with the Board. Concerning notification of NFFD determinations, the Executive Director shall prepare and keep on file a declaration of service for all such notifications.

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3, 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Add Section 217.37 of Title 7, California Code of Regulations to read as follows:

§ 217. 37 Reevaluation of Pilots on Medical Disability Leave.

If a pilot has received an NFFD determination and the pilot remains on medical disability leave, the pilot shall periodically undergo a fitness evaluation by both an examining physician and the Medical Review Officer. These periodic fitness evaluations of a pilot on medical disability leave shall be commenced by an examining physician not later than 120 days following the initial NFFD determination and each succeeding NFFD determination, if any, and shall be completed in accordance with subsections (g) through (i) of Section 217.15. The 120-day period or periods shall run from the last-entered date on the most recently completed Statement of Fitness for Duty form.

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Amend Section 217.40 of Title 7, California Code of Regulations to read as follows:

§ 217.40. Proceedings Following Fitness NFFD Determinations.

(a) If the Board seeks the revocation or suspension of a pilot's license following a determination of NFFD, it shall file an accusation and proceed with a formal hearing under the provisions of Sections 1181, 1182, and 1183 of the Code and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) An applicant for renewal of a pilot's license whose license is not renewed following determination of NFFD and a person whose application for original licensure is either denied or its consideration suspended based on a determination of NFFD may within 30 days of the date of the notification of the action taken, file a written notice of appeal with the Board. Upon filing of a timely notice of appeal, the Board shall schedule the matter for a formal hearing under the provisions of Sections 1177.5(a) and 1183 of the Code and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Pilot trainees who are determined to be NFFD and who as a result are either terminated from the pilot trainee training program or placed on leave from the program may appeal these actions. A person offered a position in the pilot trainee training program but who is denied entry into the program because determined to be NFFD prior to entry into the training program has no right of appeal. The appeal authorized by this subsection shall proceed in the following manner and in accordance with the following procedures:

(1) An appellant shall file a written notice of appeal with the Board within 30 days of the date of the notification by the Executive Director that the appellant has been terminated or placed on leave from the pilot trainee training program. The appeal shall be accompanied by a physician's written report setting forth the results of a fitness ~~determination~~ evaluation conducted by a physician of the appellant's choice. The fitness ~~determination~~ evaluation shall include, at minimum, a physical examination. The written report of the appellant's physician shall contain an opinion whether the appellant is FFD or NFFD, explain the basis for that opinion, and include any information that was relied upon in reaching that opinion. This fitness ~~determination~~ evaluation and report shall be completed at appellant's own expense.

(2) The Executive Director shall provide the Medical Review Officer ~~shall be provided~~ with the report completed by appellant's physician, and a Board-appointed physician shall ~~assess~~ evaluate the appellant's fitness for duty at Board expense. The fitness ~~determination~~ evaluation shall include a physical examination. ~~If, as a result of the fitness determination prior to the appeal, the Medical Review Officer determined appellant to be FFD, then the examining physician~~ The Board-appointed physician who determined the appellant to be NFFD shall conduct this additional fitness ~~determination~~ evaluation. The Executive Director shall notify the appellant in writing of the date, time, and location of the physical examination. The Board-appointed physician performing the fitness ~~determination~~ evaluation shall complete a written report of the fitness ~~determination~~ evaluation, which shall contain an opinion whether the appellant is FFD or NFFD, explain the basis for that opinion, and include any information that was relied upon in reaching that opinion. If the Board-appointed physician relies on information

developed during the fitness ~~determination~~ evaluation that led to the original determination, prior to the appeal, of NFFD, then that information, including any relevant written material from the first fitness ~~determination~~ evaluation, shall be submitted with the report. The report shall comment on the fitness determination made by appellant's physician.

(3) The Executive Director shall provide to appellant's physician, by the U.S. Postal Service or overnight delivery service, the report of the additional fitness ~~determination~~ evaluation and all written material developed in connection with the fitness ~~determination~~ evaluation that led to the initial determination, prior to the appeal, of NFFD. The appellant's physician shall have 30 days following the Executive Director's deposit of this material with the U.S. Postal Service or an overnight delivery service in which to submit to the Board in writing any comments on this additional fitness determination concerning the appellant.

(4) The hearing on the appeal shall be before the Board and shall be informal. All medical reports prepared in response to the appeal, including material relied upon from earlier fitness ~~determinations~~ evaluations, shall be made part of the record before the Board. The hearing will be conducted in accordance with the informal hearing procedure set forth in Sections 11445.10 through 11445.60 of the Government Code.

(A) Failure of the appellant to proceed at the time set for the appeal hearing before the Board shall be deemed a withdrawal of the appeal unless the hearing is continued for good cause.

(B) The presiding officer may order closure of the hearing or make other protective orders to the extent necessary or proper for the purposes set forth in Government Code Section 11425.20, including maintaining the confidentiality of the medical or disability information of a pilot under Harbors and Navigation Code Section 1157.1.

(C) The decision by the Board shall contain the following determinations:

1. Whether the appellant is FFD or NFFD.

2. If the trainee is NFFD, whether the trainee should be terminated from the training program or continued on leave from the training program for some period up to, but not exceeding, one year from the date of the Board's decision on appeal.

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1157, 1157.1, 1157.2, 1157.3 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.

Amend Section 217.45 of Title 7, California Code of Regulations to read as follows:

§ 217.45. Qualification Standards for Board-Appointed Physicians; Duties of Physicians.

(a) The Board, in appointing physicians who are qualified to ~~determine~~ evaluate the suitability of a person to perform the duties of a pilot or pilot trainee, may appoint physicians, medical facilities, groups or clinics that meet the necessary qualifications to perform the duties of Board-appointed physicians.

(b) An examining physician shall:

(1) be licensed by the State of California as a physician and surgeon; and

(2) have at least ~~5 years~~ one year of experience in general occupational medicine or maritime occupational medicine.

(c) A Medical Review Officer shall:

(1) be licensed by the State of California as a physician and surgeon;

(2) possess a Certificate in Occupational Medicine issued by either the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine; and

(3) have at least 10 years of experience in occupational medicine. A desirable, but not required qualification for a Medical Review Officer shall be experience with the oversight of medical monitoring programs on groups of workers.

(d) In order to maintain their appointed status, Board-appointed physicians shall:

(1) obtain understanding of the physical and cognitive demands of a pilot either by accompanying a pilot on at least one piloting trip during the first two months ~~of a contract period and any extension thereof~~ following appointment or by obtaining equivalent experience by other means acceptable to the Executive Director, such as observation and instruction.

(2) review and maintain a copy of:

(A) NVIC-04-08 the Merchant Mariner Medical Manual;

(B) the 719K form;

(C) the Board's Statement of Fitness for Duty form; and

(D) the Code provisions and Board regulations relevant to the ~~determination~~ evaluation of fitness for duty of pilots, pilot trainees, and applicants.

(3) meet annually with the other Board-appointed physicians and the Executive Director to review processes and analyze experiences.

(e) Board-appointed physicians shall carry out their functions under this article according to their obligations as licensed physicians, the applicable provisions of the Code and these regulations, and their respective contracts with the Board. Failure to comply with these requirements may result in termination of the appointment as a Board physician.

(f) If the Medical Review Officer will be unavailable, he or she shall appoint an acting Medical Review Officer from among the examining physicians, ~~and notify the Executive Director of the period in which the acting Medical Review Officer is in that capacity.~~ If such an appointment has not been made, the Executive Director may appoint an acting Medical Review Officer from among the examining physicians.

Note: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101 1141, 1157, 1157.1, 1157.2, 1157.3, 1157.4, 1171, 1171.5, 1176, 1176.5, 1180, 1181, 1182 and 1183, Harbors and Navigation Code.