

WATERFRONT COMMISSION OF NEW YORK HARBOR



RULES AND REGULATIONS

EXPLANATORY NOTE

The following rules and regulations have been promulgated by the Waterfront Commission of New York Harbor, an instrumentality of the States of New York and New Jersey, pursuant to the authority of the Waterfront Commission Act, Part I, Article IV, Section 7 [New York L. 1953, ch 882; New Jersey L. 1953, ch. 202], and are on file with the Secretary of State, State of New York, Albany, New York, and the Secretary of State, State of New Jersey, Trenton, New Jersey.

These rules and regulations are produced herein in the form in which they have been published by the Department of State of the State of New York (*see*, Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Miscellaneous, Chapter I, Waterfront Commission of New York Harbor). These rules and regulation have also been published by the State of New Jersey (*see*, New Jersey Administrative Code, Title 19, Other Agencies, Subtitle AA, Waterfront Commission of New York Harbor). The publication of the Waterfront Commission rules and regulations in the State of New Jersey Administrative Code reproduces the chapter codification and text as published in Title 21 of the New York code, with the exception of the pagination and supplement date notation, at the bottom of each page, which conform to the style standards of the New Jersey Administrative Code.

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CHAPTER 1

Waterfront Commission of New York Harbor

PART

- 1 General Provisions**
- 2 Pier Superintendents and Hiring Agents**
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- 4 Longshoremen, Checkers, and Telecommunications System Controllers**
- 5 Port Watchman**
- 6 Application and Revocation Proceedings**
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Part 1 - General Provisions

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L.1953, ch. 202; Unconsolidated Laws, § 9810[7]

Section

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§1.1**§1.5****Section 1.1 Definitions in Waterfront Commission Act; gender.**

(a) For the purposes of these regulations, unless the context clearly requires otherwise, the definitions contained in the Waterfront Commission Act shall be used. Waterfront Commission Act (hereinafter referred to as the Act) shall mean chapter 882 of New York Laws of 1953 and chapter 202 of New Jersey Laws of 1953, both as amended and supplemented, and shall include the Waterfront Commission Compact (part I of the Act) as consented to by chapter 407 of Public Law 252 of the 83rd Congress (August 12, 1953), and all concurrent legislation enacted by the States of New York and New Jersey pursuant to or in furtherance of the Act.

(b) All references to the masculine gender in these regulations shall be deemed to include the feminine gender.

Section 1.2 Suspension of regulations.

In the event of public emergency occasioned by, but not limited to, acts of God, acts of war, acts of violence or breaches of the peace, the commission may by resolution revoke or suspend, in whole or in part, any of these regulations when in its opinion the purposes of the Act will thereby be furthered or effectuated.

Section 1.3 Impeding purposes of Act.

In the event that any regulation adopted by the commission has been or is being utilized by any person to impede, obstruct or frustrate the purposes of the Act, the commission may by resolution revoke or suspend, in whole or in part, the privileges accorded to such person by such regulation when in its opinion the purposes of the Act will thereby be furthered or effectuated. Nothing contained in these regulations shall, however, abridge any statutory or constitutional right of such person.

Section 1.4 Subpoena of commission records.

A member, officer or employee who is served with a subpoena requiring the disclosure of information or the production of documents not available for public inspection pursuant to section 1.23 of this Part, shall, unless otherwise directed by the commission, appear as directed by the subpoena and, unless otherwise authorized by the commission, shall respectfully decline to discuss the information or produce the documents called for, basing the refusal upon this section. Any member, officer or employee who is served with such subpoena shall promptly advise the commission of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents. Nothing herein shall prohibit the commission from authorizing the disclosure or exchange of information with any public official, agency or other person upon a finding that the purposes of the Act will be effectuated thereby.

Section 1.5 Subpoenas.

(a) A subpoena, including a subpoena duces tecum, may be issued by any officer, agent or employee who has been duly authorized by resolution of the commission to issue such subpoenas. A subpoena shall state the section of the Act pursuant to which it is issued.

(b) A subpoena shall be personally served. Personal service shall consist of either placing the subpoena in the hand of the person named therein or of touching his person with the subpoena and informing him that it is a subpoena of the Waterfront Commission of New York Harbor. A subpoena may be returnable on any day except Sunday at any time between 8:00 a.m. and 9:00 p.m.

§1.5

(c) Tender of witness fees is not required. A person, other than an applicant or a respondent or an officer, director or shareholder of an applicant or respondent, subpoenaed by the commission to appear at any interview, hearing or other proceeding, conducted by the commission is entitled to \$40 a day for each day's actual attendance if he appears pursuant to a subpoena or a subpoena duces tecum. If a person, other than an applicant or a respondent or an officer, director or shareholder of an applicant or respondent, so subpoenaed resides more than three miles from the place of attendance, he shall also be entitled to reimbursement for each mile going from the place of residence to the place of attendance at the prevailing mileage reimbursement rate as set by the Internal Revenue Service. Such fee shall be payable by the secretary of the commission upon demand by the person subpoenaed after actual attendance, upon certification thereof by an officer, agent or employee of the commission.

§1.10**Section 1.6 Application forms.**

An application for a license or registration shall be submitted on a form to be provided by the commission.

Section 1.7 Notices and petitions to and from commission.

(a) Unless otherwise provided by regulation, all notices and petitions to the commission shall be given in writing and delivered by first class mail or by hand, addressed to the Waterfront Commission of New York Harbor, at its main administrative offices. If delivered by mail, notice shall be deemed given only when actually received.

(b) All notices and communications from the commission, other than those specified in section 6.3 of this Title, shall be duly served if enclosed in a properly post-paid wrapper addressed to the person to be notified or communicated with at the address last given by him in writing to the commission and deposited, as ordinary mail, in a post office, post office box, or mail chute maintained by the United States government, or if such notice or communication addressed to such person is delivered to such address by telegram or by registered or certified mail or by an employee or agent of the commission. Such service shall be deemed as having been made in the regular course of the business of the commission, without any certification of such service by an employee or agent of the commission. For the purpose of calculating the time of notice, service shall be considered effected upon the date of delivery to such address; provided that, where service is by ordinary mail, service shall be considered effective the third day after the mailing.

Section 1.8 Withdrawal of applications and petitions and surrender of licenses and registrations.

Applications or petitions submitted to the commission may be withdrawn only with the permission of the commission. Licenses or registrations may be surrendered only with the permission of the commission. Such permission may be granted unconditionally or with prejudice. The pendency of such application or petition to withdraw or to surrender shall not prevent the ordering of a hearing or the continuance of a hearing under section 1 or 3 of article XI of the Act, as appropriate.

Section 1.9 Notification of change of address.

Any applicant, prospective licensee, registrant, licensee, or petitioner who changes his name or his residence address shall immediately notify the commission in writing of such change.

Section 1.10 Application after denial, withdrawal, surrender or revocation.

After an application or petition has been denied, or withdrawn with prejudice, or a license or registration has been revoked or surrendered with prejudice, no further application therefor may be submitted except upon leave of the commission for good reason shown.

§1.11**§1.16****Section 1.11 Notification of arrest.**

Any person licensed or registered by the commission or any person who, within the meaning of section 3.4 of this Title, is required to execute a personal character information form in connection with a stevedore's license application, who has been charged with or arrested for any crime or offense under the Penal Law of any state, the District of Columbia, the United States, any territory or commonwealth thereof or any foreign country, other than a motor vehicle or traffic offense, shall notify the commission within 20 days of his knowledge of such charge or of the arrest.

Section 1.12 Replacement of lost license, permit or registration card.

A licensee, registrant or permittee who has lost his license, registration card or permit, after identifying himself to the satisfaction of the commission, shall be issued a temporary license, registration card or permit, valid for a period of not more than 30 days. He shall also submit a sworn application for replacement of his lost license, registration card or permit and, upon his payment of a replacement charge of \$15, the commission shall issue to him a new license, registration card or permit.

Section 1.13 Licenses, registrations and permits not transferable.

A license, registration card, or permit issued by the commission shall not be transferable at any time for any purpose.

Section 1.14 Unauthorized retention of licenses, registrations and other instruments.

No person shall retain possession of any license, permit, registration card, badge or other means of identification or instrument issued by the commission after his license, permit or registration has expired, been terminated, revoked or suspended for a period of more than 30 days.

Section 1.15 Alteration and transfer of instruments issued by commission prohibited.

Any and all licenses, badges or other evidence of a license or registration issued by the commission shall remain its property and shall be promptly returned to the commission in accordance with these regulations. No person shall forge, counterfeit, alter, erase, obliterate or transfer any card, form, badge, record, means of identification or other instrument issued by the commission. No person shall transfer any card, form, badge, record, means of identification or other instrument, or have in his possession any transferred, forged, counterfeited, altered, erased or obliterated card, form, badge, record, means of identification or other instrument, whether issued by the commission or otherwise, with intent to defraud or deceive any person licensed by the commission in order to gain employment or priority of employment for himself or another, or with intent to defraud or deceive the commission in any manner.

Section 1.16 Dismissal of application without prejudice.

Where an applicant for license or registration or a prospective licensee fails to respond to a communication or notice forwarded in accordance with the provisions of these regulations requesting him to provide additional information or to appear for an interview in connection with the application, or, in the case of an applicant for a license as a port watchman, to appear for a physical examination as required by section 5.5 of this Title, or, in the case of an applicant for a license as a port watchman, to satisfactorily complete a course of training for port watchmen as prescribed by section 5.10 of this Title, the application may be dismissed by the commission without prejudice. Such dismissal shall forthwith cancel and annul any temporary permit or temporary registration unless otherwise directed by the commission.

Section 1.17 Temporary suspension of temporary permits or registrations pending hearing.

Any temporary permit or temporary registration issued by the commission pending final action upon an application for a license or registration may, without hearing, be temporarily suspended by the commission pending final determination of a hearing to determine whether to grant or deny such application or to revoke, cancel or suspend such temporary permit or registration if, in the opinion of the commission:

(a) the applicant or prospective licensee has refused to complete the application, or to appear for or complete an interview, or a physical examination as required by section 5.5 of this Title, or otherwise to provide additional facts or evidence requested by the commission to enable it to ascertain whether the application should be granted; or

(b) the temporary permit or temporary registration has been obtained by fraud; or

(c) the continuance of the temporary permit or temporary registration is inimicable to the public peace and safety.

Section 1.18 Petition for an order to remove an ineligibility for a license or registration by reason of criminal conviction.

A petition for an order to remove an ineligibility for a license or registration by reason of a criminal conviction pursuant to section 3(b) of article V, section 3(e) of article VI, section 5-j of part II, and section 5-n (subd. 3, para. [b]) of part II of the Act, shall be made on forms furnished by the commission. Such petition may be submitted with the application for a license or registration. The petitioner may submit evidence of a pardon for the disqualifying crime in the form of the original or a photocopy of such pardon. Any petitioner who desires to offer evidence to satisfy the commission that he has conducted himself for a period of not less than five years in such manner as to warrant the granting of a license or registration shall attach to his application the original or a photocopy of any certificate of good conduct, official statement, or other form of relief from disabilities arising from the conviction, which may be issued by a court of competent jurisdiction, a board of parole, or similar authority, and any other evidence, such as letters of character reference, as he may deem relevant to the granting of a license or registration. The commission may require additional evidence, to be submitted upon forms as may be prescribed by the commission, as it deems necessary.

Section 1.19 Temporary permit or registration revoked by denial of application.

An order of the commission denying an application for a license or registration shall, unless otherwise stated, forthwith revoke and annul any temporary permit or temporary registration issued pending final action on the application for a license or registration.

Section 1.20 Counsel in commission interview or investigation.

In connection with any investigation conducted by the commission, a person interviewed or questioned under oath shall have the right to be accompanied and represented by counsel, except that he shall not be so accompanied or represented by counsel who also represents a person who is or who may become the subject of the investigation, unless the commission upon application so authorizes.

Section 1.21 Probationary registrations and licenses.

(a) Any person whose application for a license has been denied or whose license has been revoked, or any person whose application for registration has been denied or whose registration has been revoked and who has never before submitted an application or petition to the commission seeking inclusion in the register after the final order of denial or revocation of registration by the commission, may, upon application to the commission, be granted leave to apply for a probationary registration or license. Any such person whose application for registration has been denied or whose registration has been revoked must file his application for a probationary registration within one year of the commission's final order of denial or revocation. (For the purposes of this section, petitions for rehearing or reconsideration made substantially contemporaneously with the commission's order of denial or revocation of registration shall not be considered as constituting a prior application or petition to the commission which seeks inclusion in the register.) Any person who is ineligible to apply for probationary registration pursuant to the foregoing provisions of this section may apply to the commission for the removal of his ineligibility so that such person would not be disqualified, because of his previous denial or revocation, from applying for registration upon the next occasion that the commission opens the register pursuant to section 5-p of the Act.

(b)(1) Any person who has been granted such leave to apply for a probationary registration or license shall provide all the information required in the application for such status and shall complete said application pursuant to the instructions therein.

(2) Where any such applicant is recommended for probationary status by another person who is willing to act as his sponsor, such sponsor shall certify in the aforesaid application that he desires to sponsor the applicant, that he agrees to undertake the supervision of the applicant during such probationary period and that he shall use his best efforts to insure the applicant's compliance with the Waterfront Commission Act, the terms and conditions of the probation and all other laws.

(c)(1) Upon receipt of a completed and properly executed application, the staff member designated by the commission to supervise the probationary case shall, if appropriate, forward said application to the division of police of the commission for a preliminary report on said applicant.

(2) After receipt of the preliminary report, the said staff supervisor shall determine whether or not a permit or registration on a probationary status should be granted or denied, and shall submit his recommendation with respect thereto to the commission. If the staff supervisor recommends that a probationary status be granted, he shall also recommend the terms and conditions which he deems appropriate to impose on the probationer, which may include, among others, the following:

(i) That the waterfront employment of the probationer shall be confined to a designated area of the waterfront.

(ii) That the business associations of the probationer shall not include certain individuals, associations and/or groups.

(iii) That the personal associations of the probationer shall not include certain individuals or groups of individuals.

(iv) That the probationer and/or his sponsor shall periodically report to the staff supervisor who shall review the conduct and activity of the probationer.

(d)(1) If, in the commission's opinion, granting of probation is warranted, the commission shall grant such probation for a period not exceeding six months upon such appropriate terms and conditions.

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(2) The staff supervisor shall inform the applicant and the applicant's sponsor, if any, of the commission's action and of the terms and conditions imposed upon the applicant during the period of probationary status. To grant probationary status, the order denying the probationer's application or revoking his registration or license shall then be amended so as not to be effective until further order of the commission.

(3) If the prospective probationer accepts the terms and conditions imposed, the probationer shall report personally at a time designated to the staff supervisor. In addition to such periodic reports by the applicant, the sponsor of the applicant, if any, shall make periodic reports at times designated to the staff supervisor.

(e) If during the six-month period of probation the commission does not receive any information indicating that the probationer has violated any of the provisions of the Act or any of the terms and conditions imposed or any other laws, the staff supervisor assigned to review the conduct of the probationer shall, immediately prior to the expiration of the six-month probationary period, determine and recommend to the commission whether to terminate the probationary status or whether to continue it for an additional six-month period. The same procedure shall be followed upon the expiration of any additional probationary periods.

(f) If the staff supervisor shall receive information indicating that the terms and conditions of probation have been violated by the probationer, or that the probationer has violated any of the provisions of the Waterfront Commission Act or any other laws, the staff supervisor shall, upon receipt of appropriate evidence of such violation, recommend that a hearing be held to determine whether the probationary terms and conditions, or whether any of the provisions of the Waterfront Commission Act or any other laws, have been violated by the probationer.

(g) If the staff supervisor's recommendation for a hearing is approved, he shall give the probationer sufficient notice of the time and place of said hearing and of the issues to be considered at such hearing. The hearing shall be conducted by a person designated by the commission, who shall have the authority and powers of an administrative judge under section 6.9 of this Title. The probationer shall have an opportunity to appear at such hearing and may be assisted or represented by counsel or any qualified person, including the probationer's sponsor, and shall be so advised in the notice of hearing. At the hearing, the probationer may testify in his own behalf and may present witnesses in his own behalf. If the alleged violations to be heard are of such a nature that the commission is of the opinion that the continuance of the probationary status pending the outcome of the hearing is inimical to the public peace or safety, the commission may order the immediate suspension of the probationary registration or license pending final determination of the hearing.

(h) After the conclusion of the hearing, the person conducting the hearing shall make such findings as he deems appropriate upon the issues contained in the notice of hearing, and shall submit such findings to the commission, together with his recommendation for revocation or continuance of the probationary status upon any additional terms or conditions as he may deem appropriate.

(i) The commission shall determine, upon consideration of the findings and recommendations and any other pertinent information that may be submitted or received, whether the probationary status shall be revoked or continued, and, if continued, whether any additional terms and conditions of probation shall be imposed.

§1.22**§1.23****Section 1.22. Disposal of unclaimed personal property recovered by the commission.**

The commission may authorize the disposal by sale to the highest bidder or by charitable gift of any unclaimed personal property recovered by personnel of the commission in the course of their duties which, after a diligent investigation to ascertain the lawful owner thereof, shall have remained in the custody of the commission for a period of not less than three months. The commission shall cause any such personal property determined to be contraband or otherwise illegal to be destroyed. A record of the disposal of any such personal property shall be kept by the commission.

Section 1.23. Access to records.

(a) The records of the commission shall be made available for public inspection and copying, except that access may be denied as to records or portions thereof which:

- (1) are specifically exempted from disclosure by State or Federal statute;
- (2) if disclosed, would constitute an unwarranted invasion of personal privacy;
- (3) if disclosed, would impair present or imminent contract awards or collective bargaining negotiations;
- (4) are trade secrets or are submitted to the commission by a commercial enterprise or derived from information obtained from a commercial enterprise or are maintained for the regulation, supervision or licensing of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise;
- (5) are compiled for law enforcement or official investigatory purposes when their disclosure would interfere with law enforcement investigations or judicial, licensing, registration or disciplinary proceedings or hearings, or deprive a person of a right to a fair trial or hearing or impartial adjudication, or identify a confidential source or disclose confidential information relating to a criminal, licensing, registration or disciplinary investigation, or reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (6) if disclosed, would endanger the life or safety of any person;
- (7) are interagency or intraagency materials other than statistical or factual tabulations of data, instructions to the staff of the commission that affect the public, or final commission policy or determinations; or
- (8) are examination questions or answers which are requested prior to the final administration of such questions; or
- (9) are computer access codes.

(b) Requests for inspection or copying of the records of the commission shall be made to the secretary of the commission upon a form prescribed by the commission and shall contain sufficient information to identify the particular record sought. Such requests shall be made either:

- (1) in person during regular business hours at the commission's main offices at 39 Broadway, Fourth Floor, New York, NY 10006; or
- (2) by mailing such request, postage prepaid, to Secretary, Waterfront Commission of New York Harbor, at the address in paragraph (1) of this subdivision.

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(c) Upon receipt of a request, the secretary shall promptly determine whether or not the records requested can be made available and will notify the person making the request of such determination. If the request is granted, such person shall also be notified where and when the records will be made available. The commission will provide an opportunity for inspection and copying of the records at a time and place it deems feasible.

(d) The records may be inspected only under the supervision of the secretary of the commission, or such other officer or employee as may be designated by the secretary, in the commission's office during regular business hours or at such other times or places as the secretary deems convenient.

(e) Each request must be responded to within 10 business days of the receipt thereof, with reasons being given for denial of access or copying or a statement of the time and place when the record request will be made available. Any person denied access to a record of the commission by the secretary of the commission may, within 30 days, file an appeal in writing from such denial with the commission's general counsel. Such appeal may be accompanied by a memorandum in support thereof setting forth the reasons why the appellant is entitled to access to the record requested. Such appeals shall be decided by the general counsel. If the appeal is denied, the reasons therefor shall be explained fully in writing within seven business days of the date on which such appeal is received by the general counsel.

(f) Documents which are to be copied, including stenotype reporter transcriptions, will be copied by the commission, if practicable, and the person requesting a copy will be charged a fee of \$1.00 for each page not exceeding 8 1/2 x 14 inches. If it is not practicable for the commission to copy such documents, they will be copied commercially and the person requesting the copy will be charged a fee equal to the commission's cost for such commercial reproduction. A fee of \$5.00 will be charged for certification by the secretary of the commission as to the authenticity of any document, or that a record of which the commission is legal custodian cannot be found. In the event a search for records requested requires more than one-half hour, a search fee will be charged at the rate of not less than \$7.25 per hour or any part thereof, per person assigned to such search. All such fees shall be paid by the person making the request in cash, certified check or bank cashier's check, in advance or at the time of the delivery of any record for inspection or copies of any records or certificate referred to in this subdivision.

Section 1.24. Service of legal papers upon the commission.

All legal process and papers shall be served upon the commission in New York at 39 Broadway, Fourth Floor, New York, NY 10006 and in New Jersey at the commission's employment information center, 189 Corbin Street, Port Newark, NJ 07114.

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Part 2 - Pier Superintendents and Hiring Agents

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L.1953, ch. 202; Unconsolidated Laws, § 9810[7]

Section

- 2.1 Pier superintendents and hiring agents required to be licensed; employment of unlicensed pier superintendents and hiring agents prohibited**
- 2.2 Persons required to be licensed as pier superintendents and hiring agents**
- 2.3 Prospective employer to submit application**
- 2.4 Application to be accompanied by photograph and fingerprints**
- 2.5 Additional information to be furnished when required**
- 2.6 Licensing for more than one employer at single pier; employment by one employer at several piers**
- 2.7 Issuance and delivery of license**
- 2.8 Identification to be carried by licensee; identification to be returned to commission when required**
- 2.9 Participation by any person other than employer in identification or selection of pier superintendent, hiring agent or other person authorized to participate in hiring prohibited; employer prohibited from solicitation**
- 2.10 Notification by employer of termination of licensee's employment and return of evidence of license**
- 2.11 Reports to be furnished by pier superintendents.**
- 2.12 Protection of cargo**
- 2.13 Authorization to make a criminal complaint**
- 2.14 Record of checkers assigned to motor vehicles**

Section 2.1 Pier superintendents and hiring agents required to be licensed; employment of unlicensed pier superintendents and hiring agents prohibited.

No person shall act as a pier superintendent or as a hiring agent within the Port New York District without first having obtained from the commission a license to act as such pier superintendent or hiring agent, as the case may be, and no person shall employ or engage another person to act as a pier superintendent or hiring agent who is not so licensed.

Section 2.2 Persons required to be licensed as pier superintendents and hiring agents.

(a) A person will be considered a pier superintendent whenever:

(1) his work is performed at a pier or other waterfront terminal and includes the supervision, directly or indirectly, of the work of registrants employed by his employer or any other person in the course of supervision of the pier or terminal or its cargo handling operations; and

(2) he is employed by a carrier of freight by water or a stevedore, either directly or indirectly through a subsidiary or parent corporation of, or a contractor with, either of them.

(b) A person will be considered a hiring agent whenever he, on behalf of a carrier of freight by water or a stevedore or on behalf of any other person, shall select any registrant for employment. The term select any registrant for employment shall include selection of a person for the commencement or continuation of employment as a registrant, or the denial or termination of employment as a registrant.

Section 2.3 Prospective employer to submit application.

A license to act as a pier superintendent or hiring agent will be issued only upon a verified application submitted by the prospective employer.

Section 2.4 Application to be accompanied by photograph and fingerprints.

For the purpose of assisting the commission to ascertain the character, integrity and identity of the prospective pier superintendent or hiring agent, each application shall be accompanied by a photograph and the authenticated fingerprints of the prospective licensee on an identification record form furnished by the commission.

Section 2.5 Additional information to be furnished when required.

In addition to the information required by the application form, the commission may require the applicant or the prospective licensee or both to produce such further facts and evidence as may be necessary to determine whether or not the prospective licensee possesses the qualifications and meets the requirements necessary to obtain a license.

Section 2.6 Licensing for more than one employer at single pier; employment by one employer at several piers.

No person will be licensed as a pier superintendent or hiring agent for more than one employer, except:

(a) at a single pier or waterfront terminal; or

(b) where the employers are licensed as stevedores pursuant to section 3.2(a)(2) of this Title and are affiliated corporations with common officers and a common board of directors. A licensed pier superintendent or hiring agent may act for one employer at more than one pier or waterfront terminal, and a single application will be sufficient for this purpose.

Section 2.7 Issuance and delivery of license.

Upon the approval of an application, the commission will issue and deliver a license to the pier superintendent or hiring agent by transmitting the license to the applicant (employer) who shall be authorized to deliver it to the licensee upon the commencement of his employment.

Section 2.8 Identification to be carried by licensee; identification to be returned to commission when required.

Any card, badge or other means of official identification issued by the commission to any licensed pier superintendent or hiring agent shall be carried by the licensee on his person at all times when he is at work or at any pier or other waterfront terminal. Any such card, badge or other means of official identification shall be returned to the commission promptly upon request and when otherwise required by these regulations.

Section 2.9 Participation by any person other than employer in identification or selection of pier superintendent, hiring agent or other person authorized to participate in hiring prohibited; employer prohibited from solicitation.

(a) No person except the employer shall participate in any way, directly, or indirectly, in the identification, selection or designation of a person for employment as a pier superintendent, hiring agent or other person designated pursuant to section 7.44 of this Title. No person shall use, or attempt or threaten to use, any force, violence or restraint; or inflict or attempt or threaten to inflict any injury, damage, harm or loss; or coerce, or attempt to coerce, by threat or discrimination, violence or economic reprisal; or in any other

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way practice intimidation upon or against any employer in order to induce or compel said employer to select for or retain in employment any person as a pier superintendent, hiring agent or other person designated pursuant to section 7.44 of this Title. No person shall prevent, attempt to prevent, or otherwise interfere with the free exercise of discretion by any employer in selecting for or retaining in employment any person as a pier superintendent, hiring agent or other person designated pursuant to section 7.44 of this Title. No person shall pay or give, or offer or agree to pay or give any valuable consideration to any person for the purpose of directly or indirectly influencing the discretion of any employer in selecting for or retaining in employment any person as a pier superintendent, hiring agent or other person designated pursuant to section 7.44 of this Title.

(b) No employer shall receive any benefit from any person for the purpose of directly or indirectly influencing the discretion of the employer in selecting for or retaining in employment any person as a pier superintendent, hiring agent or other person designated pursuant to section 7.44 of this Title.

Section 2.10 Notification by employer of termination of licensee's employment and return of evidence of license.

Upon the termination of the employment of a licensee, without any understanding or arrangement for reemployment, or in the event of the failure of the applicant (employer) to employ the licensee within 30 days after issuance of the license, the applicant (employer) shall forthwith notify the commission of such termination of employment or failure to employ and return to the commission any license, badge or other evidence of issuance of a license in its possession.

Section 2.11 Reports to be furnished by pier superintendents.

(a) Every pier superintendent shall immediately report to the commission any theft or attempted theft.

(b) Every pier superintendent shall immediately supply the commission with a copy of the first report of accident concerning any longshoreman or checker who claims to have been injured:

(1) where the pier superintendent has reason to believe that the longshoreman or checker has made or may be making a false claim for compensation benefits; or

(2) where the longshoreman or checker does not work because of his claimed injuries for 14 days or more.

Section 2.12 Protection of cargo.

Every pier superintendent having overall charge or supervision of the operations of the pier or other waterfront terminal who is employed by a carrier of freight by water having the responsibility of safeguarding waterborne freight shall cause all cargo on the pier or terminal to be so protected from theft or pilferage as may be reasonably necessary and appropriate for the particular cargo.

§2.13**§2.14****Section 2.13 Authorization to make a criminal complaint.**

Every pier superintendent having overall charge or supervision of the operations of the pier or other waterfront terminal who is employed by a carrier of freight by water having the responsibility of safeguarding waterborne freight shall furnish the commission with the name of the person or persons in the employ of the carrier of freight by water authorized by the carrier to make a criminal complaint in connection with cargo stolen from the custody of the said carrier.

Section 2.14 Record of checkers assigned to motor vehicles.

Every pier superintendent having overall charge or supervision of the operation of the pier or other waterfront terminal who is employed by a carrier of freight by water having the responsibility of safeguarding waterborne freight shall cause to be recorded on the appropriate documents reflecting delivery or removal of cargo to or from the pier or terminal by motor vehicle, the full names of all checkers assigned to such vehicle.

Part 3 - Stevedores

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L. 1953, ch. 202; Unconsolidated Laws, § 9810[7]

Section

- 3.1 Stevedores required to be licensed; employment of unlicensed stevedores prohibited**
- 3.2 Persons required to be licensed as stevedores; persons not required to be licensed as stevedores**
- 3.3 Freight excluded from definitions of waterborne freight**
- 3.4 Application for stevedore license**
- 3.5 Application to be accompanied by photograph and fingerprints**
- 3.6 Additional information to be furnished when required**
- 3.7 Issuance and display of license**
- 3.8 Notification of stevedore contracts and changes in corporate management, ownership and capitalization**
- 3.9 Licensee to maintain books and records**
- 3.10 Records of disbursements**
- 3.11 Cargo theft and loss report; report of compensation claims**
- 3.12 Protection of cargo**
- 3.13 Authorization to make criminal complaint**
- 3.14 Record of checkers assigned to motor vehicles**

Section 3.1 Stevedores required to be licensed; employment of unlicensed stevedores prohibited.

No person shall act as a stevedore within the Port of New York District without having first obtained a license from the commission, and no person shall employ a stevedore to perform services as such within the Port of New York District unless the stevedore is so licensed.

Section 3.2 Persons required to be licensed as stevedores; persons not required to be licensed as stevedores.

(a) A stevedore license is required by any person (other than an employee) who is engaged under a contract or other arrangement with a carrier of freight by water or a licensed stevedore or, with respect to paragraphs (2) and (3) of this subdivision only, any person within the meaning of that term contained in part II, § 5-a(6)(c) of the Act (1969 amendments) (including a parent corporation or a subsidiary corporation of such carrier or licensed stevedore or "any person"):

(1) in the movement of waterborne freight carried or consigned for carriage by such carrier on vessels of such carrier berthed at piers, on piers at which such vessels are berthed or at other waterfront terminals, or to provide clerking and checking services in connection therewith; or

(2) to perform all or any part of labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals (including marine terminals), including, but not limited to, cargo storage or warehousing, cargo repairing, marine carpentry, strapping, lashing, chocking, coopering; weighing; scaling, cargo inspection and sampling, maintenance, mechanical, container or equipment repair, crane maintenance and repair, tire repair, vehicle preparation, export packing, labeling, cleaning and maintenance services, horse and cattle fitting and grain ceiling; or

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(3) to perform labor or services involving, or incidental to, the movement of freight into or out of containers (which have been or which will be carried by a carrier of freight by water) on vessels berthed at piers, on piers or at other waterfront terminals; or

(4) a license issued under paragraph (2) or (3) of this subdivision shall be restricted to the performance of the services contemplated by said paragraph.

(b) Absent extraordinary circumstances, a conditional stevedore license shall be granted to any person who is engaged to perform labor or services involving, or incidental to, the movement of freight into or out of containers (which have been or which will be carried by a carrier of freight by water) only at a warehouse, depot or other terminal which is located outside of a marine terminal (i.e. "other waterfront terminal"), upon submission of an annual certification of compliance indicating that the prospective licensee:

(1) maintains books and records containing a true and accurate account of the receipts and records arising out of his activities within the Port of New York district; and

(2) selects and hires employees in a fair and non-discriminatory manner in accordance with the requirements of applicable state and federal equal employment opportunity laws; pays such employees in accordance with applicable state and/or federal minimum wage requirements and/or applicable collective bargaining agreement(s); has not been issued any citation for willful violation(s) of federal or state laws or regulations relating to the health, safety or welfare of its employees at such other waterfront terminal within the preceding five (5) years; and has not hired any individual who is not required to fulfill the duties for which he or she is to be compensated (i.e., no-show or low-show employment); and

(3) does not have, as an officer, director, member, manager, partner, principal stockholder, or person with direct operational managerial authority, any individual who has been convicted of a felony within the preceding five (5) years; has not, to the best of his knowledge, hired any person who has been convicted of a racketeering activity within the preceding five (5) years, or any person who has been identified by a federal, state or local law enforcement agency as a member or an associate of organized crime group, a terrorist group, or a career offender cartel (as those terms are defined by § 5-h(6) and §5-i(6) of the Act); and has not, to best of his knowledge, hired any person whose application for registration or licensure has been denied, or whose registration or license has been revoked or suspended, by the Commission.

(c) Any person granted a conditional license pursuant to this Part may, in lieu of assessments, elect to make an annual payment in the amount of \$2500. Such payment shall not exceed assessments that would have otherwise been required under Article XIII(3) of the Act.

(d) Persons issued a conditional stevedore license under Paragraph (b) of this Part shall be exempt from the application provisions set forth by Article VI(2) of the Act and the expenses of administration provisions as set forth by Part II, §2(A) of the Act.

(e) Any person ineligible for a conditional stevedore license by reason of inability to certify self-compliance with the provisions set forth in Paragraph (b) of this Part may petition the commission for a waiver of ineligibility, setting forth the reason(s) for such inability to certify self-compliance. The commission may in its discretion issue an order removing such ineligibility upon a showing of good cause.

(f) A conditional license issued under Paragraph (b) of this Part shall be renewable on an annual basis, and shall be restricted to the performance of the services contemplated by said paragraph.

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(g) A stevedore license shall not be required:

(1) by any person engaged exclusively in moving by means of floating mechanical equipment bulk cargo consisting of a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count; or

(2) by any person who is not principally engaged in the movement of waterborne freight and who on occasion moves waterborne freight for or on behalf of a carrier of freight by water or a stevedore, exclusively by means of mobile land-based cranes not affixed to a pier or terminal with capacity of at least 20 tons, or exclusively by means of floating mechanical equipment; or

(3) by any person who furnishes such equipment as set forth in paragraph (2) of this subdivision to move waterborne freight to a carrier of freight by water or stevedore by lease, rental or otherwise; or

(4) by any person who is not engaged to handle freight within 1000 yards of a pier that is in regular use for the movement of waterborne freight between vessel and shore.

(h) A carrier of freight by water shall not require a stevedore license even though it may perform all or part of the services for which a stevedore license would be required when performed by any other person, provided that such services are performed on its own account, or on account of a parent corporation or a subsidiary corporation of such carrier, or as accommodation, not in the regular course of its business, at its own pier for another carrier of freight by water, or as part of its services for another carrier of freight by water for which it is a general agent.

(i) For purposes of this Part, the distance from a pier to other waterfront terminals shall not exceed 1000 yards from a pier, inclusive of cargo handling facilities and storage yards in which containers and other waterborne freight (i.e., non-bulk cargo) are placed while awaiting removal to another location. Such boundaries shall be identified and published by the Commission within 90 days of the effective date of this amendment.

Section 3.3 Freight excluded from definitions of waterborne freight.

For the purposes of article VI of the Act and this Part, waterborne freight shall not include:

(a) freight loaded within the Port of New York District upon motor vessels not in excess of 115 foot length; or

(b) freight that is not handled within 1000 yards of a pier that is in regular use for the movement of waterborne freight between vessel and shore.

Section 3.4 Application for stevedore license.

A license to act as a stevedore will be issued only upon a verified application submitted on a form furnished by the commission. Each application for a stevedore license shall be accompanied by a personal character information form furnished by the commission, completed and verified by the applicant, by each member of a partnership, and, if the applicant is a corporation, by each officer, each director and each natural person holding, directly or indirectly, five percent or more of any class of capital stock. The commission may, upon examination, require such additional evidence and information as may be required to establish the character of the real parties in interest.

§3.5**§3.8****Section 3.5 Application to be accompanied by photograph and fingerprints.**

For the purpose of assisting the commission to ascertain the character, integrity and identity of an applicant for a stevedore license, each application shall be accompanied by a photograph and the authenticated fingerprints on a record identification form to be furnished by the commission, of an individual applicant, each member of a partnership, each officer and each director and each natural person holding, directly or indirectly, five percent or more of any class of capital stock of a corporate applicant.

Section 3.6 Additional information to be furnished when required.

In addition to the information required by the application form, the commission may require the applicant to produce such further facts and evidence as may be necessary to determine whether or not the applicant possesses the qualifications and meets the requirements necessary to obtain a license.

Section 3.7 Issuance and display of license.

Upon the approval of an application, the commission will issue and deliver a stevedore license which shall indicate thereon the type of stevedoring service authorized to be performed and which shall be prominently displayed at the licensee's principal place of business within the Port of New York District. The commission will issue the following types of stevedore license:

(a) a license for the performance of general stevedoring service, including clerking and checking services;

(b) a license restricted to the performance of all or any part of cooperage, carpentry, maintenance or other related services incidental to the movement of waterborne freight including those enumerated in section 3.2(a)(2) or (3) of this Part.

Section 3.8 Notification of stevedore contracts and changes in corporate management, ownership and capitalization.

Every licensed stevedore shall notify the commission forthwith, and in detail of any of the following events:

(a) the making or execution of any term contract or arrangement for stevedoring services with a carrier of freight by water and of the termination or cancellation of such contract, but such notification shall not be required with respect to oral or written "spot" contracts or arrangements entered into with a carrier of freight by water or its agent for a single vessel operation; and

(b) any change in the officers, directors, and/or stockholders owning five percent or more of the capital stock of any class or any change in the capitalization of the corporation.

Section 3.9 Licensee to maintain books and records.

(a) Every licensed stevedore shall maintain a complete set of books and records containing:

(1) a true and accurate account of the licensee's receipts and disbursements arising out of its activities within the Port of New York District; and

(2) records reflecting the names, waterfront numbers and the places of employment of employees, including but not limited to, pier location, vessel name, warehouse, shed or other location, and dates and times of employment.

(b) All books and records enumerated in subdivision (a) of this section shall be available during business hours for inspection by the commission and its duly designated representatives until the expiration of the fifth calendar year following the calendar year during which occurred the transaction or labor performed recorded therein.

Section 3.10 Records of disbursements.

Every licensed stevedore shall comply with the following:

(a) Every disbursement for goods or services in the amount \$100 or more shall show the account to be charged and shall be supported by a voucher or other paid receipt giving a description of the goods or services, the name of the payee, the amount and the date.

(b) Every disbursement for goods or services in an amount less than \$100 shall be supported by at least a signed petty cash slip or other written record describing the disbursement.

(c) Every disbursement in the amount of \$100 or more for travel shall be supported by a voucher or other paid receipt which shall state who did the traveling, the place traveled to, the date, and the amount disbursed.

(d) Every disbursement in the amount of \$100 or more for entertainment shall be supported by a voucher or other paid receipt which shall state who did the entertaining, the place and date of the entertainment, the names of the persons entertained and the amount disbursed.

(e) Every disbursement for travel or entertainment in an amount less than \$100 shall be supported at least by a signed petty cash slip or other written record describing the disbursement.

(f) Every disbursement in the amount of \$25 or more for a gift or gratuity shall be supported by a voucher or other written record which shall show the name of the person in authority who made or authorized the disbursement, the name of the person who received it, the amount, date, and the business or other purpose for the gift or gratuity.

§3.11**§3.14****Section 3.11 Cargo theft and loss report; report of compensation claims.**

(a) Every licensed stevedore shall, within 24 hours of discovery, in a manner set forth and/or on forms furnished by the commission, file a report for each pier or other waterfront terminal at which it performs any stevedore services of all thefts and losses of waterborne freight and company owned, or leased, equipment or supplies occurring under suspicious circumstances and such other information as the commission may require.

(b) Every licensed stevedore shall immediately supply the commission with a copy of the first report of accident concerning any longshoreman or checker who claims to have been injured (1) where the stevedore has reason to believe that the longshoreman or checker has made or may be making a false claim for compensation benefits or (2) where the longshoreman or checker does not work because of his claimed injuries for 14 days or more.

Section 3.12 Protection of cargo.

In the interest of the public safety, welfare, prosperity, health and peace, every licensed stevedore having the responsibility of safeguarding waterborne freight, shall cause all cargo on the pier or other waterfront terminal to be so protected from theft or pilferage as may be reasonably necessary and appropriate for the particular cargo.

Section 3.13 Authorization to make criminal complaint.

Every licensed stevedore shall furnish the commission with the name of the person or persons in its employ authorized by it to make a criminal complaint in connection with cargo stolen from its custody.

§3.14**§3.14****Section 3.14 Record of checkers assigned to motor vehicles.**

Every licensed stevedore shall cause to be recorded on the appropriate documents reflecting delivery or removal of cargo to or from the pier or other waterfront terminal by motor vehicle, the full names of all checkers assigned to such vehicle.

**Part 4 - Longshoremen, Checkers, and Telecommunications System
Controllers**

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L. 1953, ch. 202; Unconsolidated Laws, § 9810[7]

Section

- 4.1 Longshoremen, checkers, and telecommunications system controllers required to be registered; employment of longshoremen, checkers and telecommunications system controllers not registered prohibited**
- 4.2 Persons required to be registered as longshoremen; persons not required to be registered as longshoremen**
- 4.3 Checkers required to be registered**
- 4.4 Longshoremen's register; division into sections; designation and sponsorship of "1969 amendment" longshoremen**
- 4.5 Telecommunications system controllers (TSC) required to be registered**
- 4.6 Application for emergency use of persons not registered**
- 4.7 Application for registration**
- 4.8 Application to be accompanied by photograph and fingerprints**
- 4.9 Additional information to be furnished when required**
- 4.10 Identification to be carried by registrant; identification to be returned to commission when required**
- 4.11 Baggage porter identification**
- 4.12 Solicitation of tips prohibited**
- 4.13 False compensation claims prohibited**

Section 4.1 Longshoremen, checkers, and telecommunications system controllers required to be registered; employment of longshoremen, checkers and telecommunications system controllers not registered prohibited.

No person shall act as a longshoreman or as a checker within the Port of New York District unless at the time he is included in the longshoremen's register as a longshoreman or checker, respectively, and no person shall employ another to work as a longshoreman or checker within the Port of New York District who is not so included in the longshoremen's register. No person shall act as a telecommunications system controller within the Port of New York District unless at the time he is registered by the commission as such, and no person shall employ another to work as a telecommunications system controller within the Port of New York District who is not so registered by the commission.

Section 4.2 Persons required to be registered as longshoremen; Persons not required to be registered as longshoremen.

(a) Inclusion in the longshoremen's register as a longshoreman is required for any person:

- (1) who is employed to handle waterborne freight by a carrier of freight by water or by a stevedore at a pier or other waterfront terminal, including, without being limited to, gang foremen, dock gang foremen, headers, gangwaymen, winchmen, dockmen, holdmen, terminal labor operators of mechanical equipment, sorters and baggage porters; or

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(2) who is employed by a carrier of freight by water or by a stevedore, physically to perform labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals (including marine terminals within the meaning of the Act), including, without being limited to, cargo storagemen and warehousemen, cargo repairmen, marine carpenters, container loaders and strippers, lashers, chockers, coopers, weighers, scalers, cargo inspectors and samplers, trailer interchange inspectors, maintenance, mechanical, container or equipment repairmen, crane maintenance men and repairmen, tire repairmen, vehicle preparers, export packers, labelers, cleaning and maintenance personnel, horse and cattle fitters and grain ceilers; or

(3) who is indirectly employed by a carrier of freight by water or by a stevedore, through a subsidiary or parent corporation of, or a contractor with, either of them, physically to perform the labor or services described in paragraph (2) of this subdivision; or

(4) who is employed by any person for work at a pier or other waterfront terminal physically to move waterborne freight to or from a barge, lighter or railroad car for transfer to or from a vessel of a carrier of freight by water which is, shall be, or shall have been berthed at the same pier or other waterfront terminal; or

(5) who is employed by any person, other than by a carrier of freight by water or by a stevedore, to perform labor or services involving or incidental to the movement of freight at a location in a marine terminal within the meaning of the Act.

(b) Inclusion in the longshoremen's register as a longshoreman is not required for:

(1) jobs limited to the handling of liquid cargoes in bulk in tanks (such as, but not limited to, fuel oils, petroleum or orange juice), or carriage by barge of bulk cargoes consisting of a single commodity (such as, but not limited to, cement, gravel, coal, grain or ore) loaded or carried without wrappers or containers or limited to the handling of cargoes transported from one point to another point within the Port of New York District; or

(2) jobs limited the handling of waterborne freight within 1000 yards of a pier that is not in regular use for the movement of waterborne freight between vessel and shore; or

(3) any person who is regularly engaged in the performance of labor or services not covered by subdivision (a) of this section and who is only incidentally engaged in the performance of labor or services covered by said subdivision (a) where permission therefor has been previously obtained from the commission; or

(4) persons who are regularly employed to perform labor or services not covered by subdivision (a) of this section and who are assigned by such employer to the performance of labor or services covered by said subdivision (a) only to meet special or emergency needs for the protection of the public health or safety where approval therefor has been previously obtained from the commission; or

(5) persons who are employed by any person who, pursuant to Section 3.2(b) of this Title, has been granted a conditional stevedore license upon submission of an annual certification of compliance.

Section 4.3 Checkers required to be registered.

Inclusion in the longshoremen's register as a checker is required for any longshoreman, including, but not limited to, a timekeeper, checker or clerk, who is employed to engage in direct and immediate checking of waterborne freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores.

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§4.4**§4.6****Section 4.4 Longshoremen's register; division into sections; designation and sponsorship of "1969 amendment" longshoremen.**

(a) A longshoremen's register shall be maintained in the offices of the commission. Copies shall be kept and exhibited at each commission employment information center.

(b) The register shall be divided as follows:

(1) A "deep-sea" register which shall include all persons registered by the commission as longshoremen and checkers except those persons registered as longshoremen pursuant to the 1969 amendments to the Act (NY Laws 1969, ch. 953; NJ Laws 1969, ch. 128).

(2) An "A" or "1969 amendment" register which shall include all persons registered by the commission as longshoremen pursuant to the 1969 amendments to the Act (NY Laws 1969, ch. 953; NJ Laws 1969, ch. 128).

(c) No application shall be accepted from any person seeking inclusion in the deep-sea register unless the commission at such time has determined to accept such applications.

(d) No application shall be accepted from any person seeking inclusion in the "A" register unless that person is sponsored for employment by a stevedore or by any person, within the meaning of those terms contained in the 1969 amendments to the Act (NY Laws 1969, ch. 953; NJ Laws 1969, ch. 128). The sponsoring employer shall submit a letter setting forth the name and address of the person, and the labor service(s) to be performed, and shall certify that the selection of the persons so sponsored was made in a fair and nondiscriminatory basis in accordance with the requirements of the laws of the United States and the States of New York and New Jersey dealing with equal employment opportunities.

Section 4.5 Telecommunications system controllers (TSC) required to be registered.

Registration as a telecommunications system controller is required of any person employed by the association representing employers of longshoremen and checkers and of the labor organization representing longshoremen and checkers in the Port of New York District, or a joint board of such association and labor organization, who participates in the operation of the telecommunications hiring system (THS). An applicant for registration as a telecommunications system controller must be sponsored by the association representing employers of longshoremen and checkers and the labor organization representing longshoremen and checkers in the Port of New York District, or by a joint board of such association and labor organization. Registration as a telecommunications system controller shall terminate upon the registrant's cessation of employment.

Section 4.6 Application for emergency use of persons not registered.

An application for approval under section 4.2(b)(3) of this Part shall be made to the commission by an employer in writing, who shall certify as follows:

(a) that an emergency exists involving the protection of the public health or safety, setting forth the facts and details of such emergency for each ship;

(b) that only regular employees of his company will be used for this purpose;

(c) that no one will be used who has been denied registration or whose registration has been previously revoked by the commission, or is under present suspension;

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(d) that no one will be used who, to the best knowledge of the employer, has a criminal record;

(e) that the employer will maintain accurate records of the name of persons so used and their time and place of assignment;

(f) that such records will be available for inspection by commission personnel at the direction of the executive director in the event such records become necessary for an investigation conducted by the commission or other law enforcement agency;

(g) that anyone so used by the employer will be removed immediately at the request of the executive director.

§4.11**Section 4.7 Application for registration.**

An application for registration as a longshoreman, checker or telecommunications system controller shall be made on forms furnished by the commission and may be filed at the main administrative offices of the commission or at a designated employment information center.

Section 4.8 Application to be accompanied by photograph and fingerprints.

For the purpose of assisting the commission to ascertain the identity and criminal record, if any, of the applicant, each application shall be accompanied by a photograph and the authenticated fingerprints of the applicant on an identification record form furnished by the commission.

Section 4.9 Additional information to be furnished when required.

In addition to the information required by the application form, the commission may require the applicant to produce such further facts and evidence as may be necessary to establish the identity of such person and to determine whether registration should be granted.

Section 4.10 Identification to be carried by registrant; identification to be returned to commission when required.

Any card, badge or other means of official identification issued by the commission to any registrant shall be carried by the registrant on his person at all times when he is at work or at any pier or waterfront terminal. Any such card, badge or other means of official identification shall be returned to the commission promptly upon request and when otherwise required by these regulations.

Section 4.11 Baggage porter identification.

Every longshoreman who works as a baggage porter for passengers embarking or disembarking on a vessel carrying more than 12 passengers shall wear while he is so working, so as to be clearly visible, such identification as shall be approved by the commission. The hiring agent or pier superintendent responsible for the assignment of longshoremen to baggage work shall cause such identification to be distributed to and collected from such longshoremen daily and shall cause a written record to be kept with respect to the distribution and collection of such identification on forms furnished or approved by the commission. Such written records shall be retained by the hiring agent or pier superintendent for a period of four months and shall be available for inspection by the commission.

§4.12**§4.13****Section 4.12 Solicitation of tips prohibited.**

No person registered by the commission shall solicit, request, require, demand or exact any tip or gratuity or anything of value for any work performed by himself or by any other registered person in his capacity as such registered person, including but not limited to the handling of baggage and the loading and unloading of trucks.

Section 4.13 False compensation claims prohibited.

No person registered by the commission shall make a false statement for the purpose of obtaining any benefit or payment under any State Workers' Compensation Law or under the Federal Longshoremen and Harbor Workers Compensation Act. Any violation of this section shall be deemed by the commission, in the case of a checker, to constitute an act which is inconsistent with the possession of good character and integrity under section 5-n of the Waterfront Commission Act, and, in the case of a longshoreman, to constitute the longshoreman a danger to the public peace or safety under article VIII of the Act.

Part 5 - Port Watchman

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L. 1953, ch. 202; Unconsolidated Laws, § 9810[7]

Section

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Section 5.0 Mission.

(a) The port watchman is assigned to a company's facilities to protect all property within the limits of the facility and to protect and to protect the lives of employees and others on the property. This includes:

- (1) providing building and premises security to the employer's property;
- (2) enforcing company policies and procedures;
- (3) making vehicular and foot patrols and performing security checks;
- (4) providing effective gate and exit control to insure compliance with any instituted badge control or pass control system;
- (5) regulating and directing traffic as necessary and as permitted by local laws;
- (6) preventing theft, arson, sabotage;
- (7) responding to alarm signals;
- (8) to observe and report fire and safety hazards;
- (9) promoting safety to prevent accidents;
- (10) furthering goodwill and public relations;
- (11) submitting routine and special reports to supervisors as well as shift logs and records; and
- (12) enforcing rules and policies that have been established for the protection of the facility and personnel.

(b) The port watchman is not a police officer, nor does he/she have any police powers of arrest. The port watchman's rights and powers are no more and no less than those of any U.S. citizen. The port watchman is subject to civil suit for false arrest or imprisonment under any circumstances if the security officer detains someone illegally. The port watchman's duty is to prevent rather than to apprehend. The port watchman is under a duty to notify law enforcement authorities of any criminal conduct they become aware of or observe.

General Provisions

Section 5.1 Port watchman defined.

(a) A port watchman shall mean any person employed directly or indirectly, by contract or other arrangement, by the operator of pier or other waterfront terminal, or by a carrier of freight by water, to perform services as a guardian or protector of property on any pier or other waterfront terminal. Port watchmen shall be classified and designated as follows (any referenced to port watchman is these regulations is deemed to include all three classifications and designations set forth below):

§5.1

(1) Security officer. A watchman, roundsman, gateman, guard, security officer, inland security officer, or any person performing similar services. For purposes of this Part, an inland security officer is a guardian or protector of property at any warehouse, depot or other terminal, other than a pier, whether enclosed or open, which is located in a marine terminal in the Port of New York District and any part of which is used by any person to perform labor or services involving, or incidental to, the movement of waterborne freight or freight. Inland security officer shall also include, individuals employed as canine handlers at any pier, warehouse, depot or other terminal, whether enclosed or open, at which passengers embark or disembark from vessels and/or at which baggage is handled or sorted, this includes, but is not limited to, those terminals currently located in the Port of New York District which are designated as passenger ship terminals. Individuals licensed as inland security officers are limited to employment by their sponsoring employer.

(2) Supervisory security officer. A security officer, supervisor, dispatcher or any other person, a substantial part of whose services, performed at piers or other waterfront terminals, includes the supervision, selection or assignment of security officers engaged in the protection of property on any pier or other waterfront terminal.

(3) Management security officer. An officer, manager, supervisor, dispatcher or any other person, whose services performed at piers or other waterfront terminals is to supervise, select or assign security officers or supervisory security officers engaged in the protection of property on any pier or other waterfront terminal and/or an individual who performs the duties of a facilities security officer (FSO) in accordance with the requirements of the Maritime Transportation Security Act of 2002 and related United States Coast Guard regulations. A management security officer shall not be a member of a labor organization which represents longshoremen, checkers, or port watchmen; however, this shall not be deemed to prohibit management security officers from being represented by a labor organization which does not also represent longshoremen, checkers, or port watchmen. Individuals licensed as management security officers are limited to employment by the sponsoring employer.

(b) Persons employed exclusively as protectors or guardians of persons (as distinguished from property) or exclusively in the protection or guarding of ships or vessels not included in the definition of carrier of freight by water, or cargo not included in the definition of waterborne freight, or for work on a pier or waterfront terminal not used for waterborne freight, shall not be deemed to be a port watchman and shall not be required to obtain a license from the commission.

Section 5.2 Requirement for license.

(a) No person shall act as a security officer, supervisory security officer or management security officer within the Port of New York District without first having obtained a license or temporary permit from the commission. No person shall employ a security officer, supervisory security officer, or management security officer who has not obtained such license or temporary permit.

(b) Licensure under this Part shall not be required by persons who are employed by any person who, pursuant to Section 3.2(b) of this Title, has been granted a conditional stevedore license upon submission of an annual certification of compliance.

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Section 5.3 Application for license.

- (a) An application for a license to act as a security officer, a supervisory security officer, or management security officer shall be made under oath on a form approved and furnished by the commission and shall include:
- (1) the full name, residence, business address (if any), place and date of birth and social security number of the applicant;
 - (2) the present and previous occupations of the applicant, including the places where the applicant was employed and the names of the employers;
 - (3) the citizenship of the applicant and, if the applicant is a naturalized citizen of the United States, the certificate of naturalization, including the court and date of his naturalization;
 - (4) a photographic license to drive or other photographic identification issued by a Federal, State or county agency, or a valid passport;
 - (5) if the applicant is a non-citizen of the United States, valid proof from the Federal government of authorization to work in the United States;
 - (6) two photographs (2" x 2");
 - (7) a certification from an employer that such employer will sponsor the applicant for employment specifying the capacity, security officer, supervisory security officer or management security officer, in which the applicant is being sponsored for employment; and
 - (8) such further facts and evidence as the commission may deem appropriate to enable it to ascertain whether the license should be granted.
- (b) All applicants for a license to act as a security officer and supervisory security officer shall:
- (1) complete an application for a license as set forth in subdivision (a) of this section;
 - (2) submit to a fingerprint criminal history check at the applicant's expense;
 - (3)(i) have a high school diploma or Graduate Equivalency Diploma/Degree (GED); and
(ii) achieve a proficiency score equivalent to an eight (8th) grade level of education on a test administered by the commission or by another agency with the approval of the commission;
 - (4) undergo a psychological testing and meet the requirements thereof;
 - (5) undergo medical examination and meet the requirements thereof; and
 - (6) undergo drug screening and be free from drugs.
- (c) All applicants for a license to act as a management security officer shall:
- (1) complete an application for a license as set forth in subdivision (a) of this section;
 - (2) submit to a fingerprint criminal history check at the applicant's expense.
- (d) Pending final action on an application made for such a license, the commission may issue a temporary permit to any applicant, any such temporary permit may be issued under such terms and conditions as the commission may prescribe and shall be valid for a period to be fixed by the commission not in excess of six months.

§5.4**§5.6****Section 5.4 Duration of license.**

(a) A license to act as a port watchman shall continue indefinitely and need not be renewed, provided that the licensee shall meet the requirements of the Waterfront Commission Act and these rules and regulations for such license, and provided further, that the licensee shall comply with the following every three years:

(1) for all security officers and supervisory security officers:

(i) submit to a medical examination and meet the physical and mental fitness standards in accordance with this Part;

(ii) successfully complete yearly training, as required by section 5.10 of this Part; and

(iii) submit supplementary personal history information;

(2) for all management security officers:

(i) submit a certification from an employer that the licensee is employed in such a capacity; and

(ii) submit supplementary personal history information.

(b)(1) The holder of a temporary permit as a port watchman need not apply for renewal of said permit, provided that the permittee shall comply with the requirements of subdivision (a) of this section.

(2) The license or temporary permit of any person who fails to comply with subdivision (a) of this section shall be cancelled, unless continued by the commission for good cause shown.

Section 5.5 Medical examination.

Any security officer and supervisory security officer licensee, when the commission requires, and every security officer and supervisory security officer applicant shall submit to a medical examination to be conducted by a licensed physician approved by the commission. Such examination shall include the recording of a complete medical history and any appropriate laboratory procedures which the physician may deem necessary for the purposes of this section. In lieu of such examination, the commission may accept the report of a medical examination conducted by a medical clinic or medical center which has previously been approved by the commission.

Section 5.6 Physical fitness standards.

An application for a license as a security officer or supervisory security officer shall not be granted and the license or temporary permit of any person required to meet the physical standards pursuant to section 5.4 of this Part shall be cancelled unless the applicant, licensee or holder of a temporary permit:

(a) is not more than 70 years of age;

(b) has:

(1) hearing acuity of 40 decibels or better in both ears at the average of the following frequencies - 500, 1000, 2000 and 4000 Hertz; use of a hearing aid is permitted;

(2) vision correctable to 20/40 in both eyes;

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- (3) blood pressure of no more than 140/90 (at rest);
 - (4) ability to walk long distances unaided;
 - (5) ability to stand for prolonged periods of time;
 - (6) ability to lift a minimum of 45 pounds; and
 - (7) ability to run short distances;
- (c) has not had within three years a history of, and is presently free from symptoms of:
- (1) mental illness;
 - (2) heart disease; and
 - (3) uncontrolled seizures;
- (d) is free from:
- (1) uncompensated liver disease;
 - (2) chronic lung disease;
 - (3) uncontrolled asthma;
 - (4) active tuberculosis;
 - (5) uncontrolled or uncontrollable diabetes;
 - (6) neuro-muscular disease, such as Parkinson's disease and neuro-sclerosis;
 - (7) chronic alcoholism; and
- (e) is free of any condition, illness, disease, deformity or psychopathic personality traits, including but not limited to abnormality of weight-height ratio (which shall be determined by utilizing the Metropolitan Life Insurance height-weight table or its medically accepted equivalent and adding thereto or subtracting therefrom weight of not more than 25 percent), hernia, arthritis, peripheral vascular disease, and addiction and habituation to any drug which has psycho-motor effects, which by its nature would make him unable or potentially unable to perform any of the duties of a security officer or supervisory security officer, or which might cause his presence upon the waterfront to be hazardous to himself or to endanger the life and property of others.

§5.7**Section 5.7 Waiver of physical fitness standards.**

The commission, in its discretion, upon petition of an applicant for renewal of a license, or upon its own initiative, may grant a waiver of any physical standards required for a license to act as a security officer or supervisory security officer where such petition shows and the commission finds that:

- (a) the petitioner's employer joins in the petition, is satisfied with the petitioner's services, and will continue to employ petitioner;
- (b) the petitioner is physically capable of satisfactorily performing the duties of a security officer or supervisory security officer; and
- (c) the petitioner was employed by said employer for a minimum of 500 hours during the preceding year.

§5.8**§5.10****Section 5.8 Exemption from medical examination.**

(a) No holder of a temporary permit or license, who has been previously physically examined by a physician approved by the commission within three years, shall be required to submit to a medical examination pursuant to section 5.5 of this Part, unless specifically required to do so by the commission, if he:

(1) has not been granted a waiver from the physical fitness standards prescribed by section 5.6 of this Part; and

(2) has not since the time of his prior physical examination been hospitalized or received medical treatment for any condition, illness, disease or deformity as set forth in section 5.6 of this Part.

(b) No holder of a temporary permit or license, who has been physically examined during the current year by a physician approved by the commission, shall be required to submit to a medical examination pursuant to section 5.5 of this Part, unless specifically required to do so by the commission.

(c) No applicant for a license to act as a management security officer under section 5.1(a)(3) of this Part shall be required to submit to a medical examination or meet the age requirements of section 5.6 of this Part.

Section 5.9 Cancellation of license or temporary permits for failure to work.

(a) The license or temporary permit of a port watchman shall be cancelled if said person fails to work at least 200 hours during a 12-month period commencing each October 1st, unless said failure to work resulted from ill health, physical injury, military service or other good cause.

(b) A person whose license or temporary permit is cancelled for failing to meet the work requirements may reapply for a license, provided that at least one year has expired from the date of cancellation of the license or temporary permit. The one-year period may be waived by the commission for good cause shown.

Section 5.10 Training and fitness standards.

(a) No temporary permit or license shall be issued to a security officer or supervisory security officer unless he shall have satisfactorily completed a course of training for security officers and supervisory security officers given by the commission or under the supervision of the commission. Any course given by employers of security officers or supervisory security officers shall include instruction with respect to protection of cargo, asset protection, human and public relations, report writing, communications, patrols and fixed posts, physical security, crime prevention, fire protection, life safety, criminal law and criminal liability, civil law and civil liability, ethics, professional conduct, investigations, First Aid/C.P.R./AED, hazmat, waterfront security officer rules and regulations, terrorism, law enforcement agencies (F.B.I., State Police, Coast Guard, Customs and Immigrations), Maritime Security Act of 2002, terminal safety and awareness, USMX and/or NYSA orientation and such other topics as may be specified from time to time by the commission, and shall include instruction by commission personnel as the commission shall require.

(b) To maintain the standards of mental fitness prescribed by the commission, every licensed security officer or supervisory security officer, or holder of a temporary permit, once every year shall complete an additional course of training given or approved by the commission.

(c) This section shall not be applicable to management security officers licensed under section 5.1(a)(3) of this Part.

§5.11**§5.14****Section 5.11 Expiration of license at 70.**

(a) All licenses or temporary permits to act as a security officer or supervisory security officer shall expire at the end of the calendar year in which the licensee or the holder of the permit reaches 70 years of age, unless a waiver is obtained pursuant to section 5.7 of this Part.

(b) This section shall not be applicable to a management security officer licensed under section 5.1(a)(3) of this Part.

Section 5.12 Licenses and other official identification.

(a) Upon the approval of the application, the commission will issue a license to the applicant. Licenses of inland security officers, inland supervisory security officers and management security officers will be limited to employment by the sponsoring employer.

(b) A badge will be issued, or replaced, by the commission to each licensee and holder of a temporary permit except a management security officer licensed under section 5.1(a)(3) of this Part, upon payment of a \$10 deposit. All badges shall be issued by and remain the property of the commission. The badge will be worn by each licensee and holder of a temporary permit on the outer garment on the left chest so as to be clearly visible at all times during his tour of duty. Under special circumstances, upon application to the commission by the employer, the requirement to wear a badge while on duty may be waived.

(c) Any licensee or holder of a temporary permit who, without good cause, does not work as a security officer or supervisory security officer for at least three calendar months shall deposit the badge or temporary badge issued him with the commission for safekeeping. A badge or temporary badge will be reissued to such person upon their return to work as a security officer or supervisory security officer.

(d) The loss of such badge or temporary badge shall be reported by the licensee or holder of a temporary permit to the commission immediately after the loss. Upon proof by affidavit of such loss, a new badge or temporary badge will be issued by the commission.

(e) Each licensee or holder of a temporary permit shall return his license or temporary permit and badge to the commission upon the surrender, suspension, revocation or other termination of such license or permit. Upon such return of the badge, the deposit will be refunded.

Section 5.13 Security officer's and supervisory security officer's uniform.

Every security officer and supervisory security officer shall wear only uniforms approved by the Waterfront Commission as outlined in section 5.19(b)(42) of this Part.

Section 5.14 Information to be furnished by employers.

Each employer of port watchmen or any duly authorized agent for such employer shall upon request furnish the commission with information as to name, waterfront commission number, social security number, seniority classification, time, place, hours and days worked, and the compensation therefor for each port watchman employed by such employer. Each employer shall maintain appropriate books and records to comply with the requirements of this section. Such books and records shall be preserved for a period of five years and be open for inspection by the commission.

§5.15**§5.17****Section 5.15 Records to be maintained by security officers and supervisory security officers.**

(a) Each security officer and supervisory security officer shall keep in a memorandum book an accurate record of each tour of duty. Such book shall be furnished by and remain the property of the commission and shall be returned to the commission when completed or upon the surrender, suspension or termination of the license or temporary permit.

(b) Such memorandum book shall be carried by every security officer and supervisory security officer while on duty. All entries in such memorandum book shall be legible, written in English and in ink.

(c) Before performing each tour of duty, all security officers and supervisory security officers shall enter in their memorandum books their employer, the date, the tour of duty, the pier and their assignment at such pier, and the time of arrival at their post. During the tour they shall enter a full and accurate record of any thefts or attempted thefts of cargo and unusual occurrences during their tour of duty, indicating the time when and to whom reports of these incidents have been made. If there have been no such incidents, the security officer or supervisory security officer shall write "Nothing to report" at the end of the tour of duty. At the end of the tour of duty, the security officer shall also enter the time out and shall sign his full name and license number.

(d) All such books shall be available for inspection by the commission at any time.

Section 5.16 Security officer's and supervisory security officer's log.

The commission shall furnish a log for each pier or waterfront terminal which shall remain the property of the commission and be kept in the custody of the security officer or supervisory security officer assigned to the gate who shall be responsible for its safekeeping, or in such other place as may be authorized by the commission. Every security officer or supervisory security officer, upon entering or leaving the pier or terminal, shall enter in such log his signature, license number, time in or time out and such other information as may be required by the commission. All such logs shall be available for inspection by the commission at any time. In lieu of such a log, the commission may, in its discretion, authorize, at any particular pier or waterfront terminal, the use of any mechanical or electrical instrument or device which provides the information required by this section and which shall be deemed the equivalent of a log for the purpose of this section (except that its ownership shall not be in the commission unless such instrument is originally furnished by the commission).

Section 5.17 Gate vehicle books and identification check.

(a) In addition to any books or records required by the commission to be maintained by security officers and supervisory security officers, every security officer or supervisory security officer assigned to a gate or to guard an entrance or exit to any pier or other waterfront terminal shall maintain a "gate vehicle book" or other record to be furnished or approved by the commission, in which shall be recorded, the names of all occupants of a vehicle entering the gate, upon the security officer's or supervisory security officer's viewing of a photo identification of each occupant, and the license plate and gate pass numbers, if any, of all vehicles and trailers entering and leaving; except, with respect to the following class of vehicles, only a photo identification check of the vehicle's occupants is necessary:

(1) motor vehicles owned, leased or operated by the pier or terminal operator or any licensed stevedore performing services on the pier or terminal;

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(2) motor vehicles owned, leased or operated by the pier or terminal operator or a licensed stevedore performing services on the pier or terminal, where a specified parking area has been provided for such persons and the employer maintains an identification list of all such motor vehicles or has provided a sticker or other means of identification to be affixed to all such motor vehicles;

(3) motor vehicles on the pier or terminal or aboard vessels, and passengers embarking or disembarking from vessels; or

(4) motor vehicles carrying law enforcement officers or other government officials.

(b) All such gate vehicle records furnished by the commission shall remain the property of the commission and shall be available for inspection by the commission at any time; provided, however, such a gate vehicle book or record may be furnished by the terminal operator, and shall remain its property, if it is in a form approved by the commission, kept as a permanent record for a period of five years from the date of the last entry therein and it is available for inspection by the commission at any time.

Section 5.18 Reports to be furnished by port watchmen.

Every security officer, supervisory security officer, or management security officer who has the overall supervision of the protection of cargo on a pier or waterfront terminal, shall immediately report to the commission any theft or attempted theft.

Section 5.19 Standards of conduct.

(a) Any license or temporary permit issued to a port watchman may be revoked or suspended for such periods as the commission deems in the public interest, or the licensee reprimanded for any act or conduct in violation of the act or these regulations. Every port watchman is responsible for and subject to these rules and any breach of these rules may result in revocation or suspension of any temporary permit or license.

(b) Among other things, failure by a port watchman to adhere to the following standards of conduct, and any terms or conditions of his license or temporary permit, will be considered by the commission in determining whether the license or temporary permit should be revoked or suspended. Every port watchman shall:

General Requirements

(1) have in his possession at all times while on duty his license or temporary permit;

(2) wear his Waterfront Commission uniform as required by these regulations; and only in the performance of his duties as a port watchman;

(3) wear a cap or safety helmet as required by these regulations;

(4) before completing his tour of duty, submit to his immediate superior a detailed written report of any theft or attempted theft of cargo or suspicious activity which comes to his attention during such tour;

(5) remain at his assigned post, except when his duties as a port watchman require otherwise or unless otherwise authorized by his supervisor;

(6) be in a sober condition and refrain from consuming any intoxicating beverage while on duty;

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- (7) remain awake while on duty;
- (8) refrain from smoking or carrying lighted cigarettes, cigars or pipes in prohibited areas;
- (9) while on duty, comply with any special requirements of his license or temporary permit, to meet the physical fitness standards of section 5.6 of this Part;
- (10) while assigned to guard an entrance or exit to any pier or waterfront terminal, check and collect gate passes from all trucks leaving the pier or terminal where gate passes are issued on such pier or terminal;
- (11) while assigned to guard an entrance or exit to any pier or waterfront terminal, examine any motor vehicle and its contents where there is reasonable ground to believe that such motor vehicle is carrying merchandise from the pier or terminal without authority;
- (12) perform the duties assigned to him in a diligent, conscientious and careful manner;
- (13) keep and maintain his memorandum book as required by these regulations;
- (14) know the location and operation of fire alarms and fire fighting equipment, the location of emergency exits, telephones, first aid stations, information booth, key stations, the names and telephone numbers of police, fire department, hospital and ambulance services;
- (15) report any on-the-job injuries immediately;
- (16) record all security violations and safety hazards observed in their memorandum book, the Waterfront Commission log books or an other designated Waterfront Commission report forms;
- (17) be at their post ready to commence their duties at the scheduled time; a security officer is not required to arrive earlier, and should not arrive later, but should arrive at the scheduled time;
- (18) not accept relief by another security officer who is unfit to assume the post by reasons of intoxication, breath smelling of liquor, illness or other condition which might prevent him from performing the required duties. If while on duty a security officer's relief arrives in what appears to be an intoxicated condition, the security officer must contact his supervisor and explain the situation. The security officer on duty must make the necessary notifications and request assistance to insure that after the intoxicated employee is denied access to the post that he does not endanger himself or the general public;
- (19) while on duty, stay on the shift until properly relieved or excused, and security officers must not remain at their post once relieved unless requested by a supervisor or company representative;
- (20) refrain from the use of profane, indecent or abusive language or gestures;
- (21) refrain from acting in a rude or boisterous manner;
- (22) not ask for or receive any tips or other gratuities;
- (23) not discuss information of any kind concerning his duty assignment with anyone except his relief, supervisor or recognized company representative or representatives of the Waterfront Commission;

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(24) not bring to or use on post, newspapers, magazines, radio, recorder/playback device, or a television set; unless otherwise authorized by the employer;

(25) not loiter or lie down while on duty;

(26) not prepare, initiate or submit false reports;

(27) not use any company-owned equipment without having obtained prior approval nor permit any other unauthorized person to do so;

(28) not loan facility keys, which are entrusted to his care, to any person not authorized by the company to possess them;

(29) not permit himself to be visited by friends, acquaintances, or relatives while on duty;

(30) not steal or engage in any form of theft or pilferage;

(31) not cause destruction to or loss of company or facility property;

(32) not gamble on duty;

(33) not report to work under the influence of alcohol or drugs;

(34) not possess or use alcohol or drugs while on duty;

(35) not engage in immoral or indecent behavior;

(36) not carry a weapon while on duty unless authorized;

(37) not misuse the badge, uniform or identification;

Obey Laws

(38) set an example by obeying all employer's rules and policies, Rules and Regulations of the Waterfront Commission, as well as the laws of the United States, State, county, city or municipality;

(39) in the case of a serious unlawful incident (i.e., assault, breaking and entering, larceny, etc.) it may be necessary for an arrest warrant to be obtained against the individual or individuals from the appropriate jurisdiction. NO PORT WATCHMAN will obtain or sign such an arrest warrant. (It is the security officer's responsibility to immediately notify the company or the police authorities, and his/her immediate supervisor of such incident.) It is the responsibility of the COMPANY'S MANAGEMENT STAFF TO OBTAIN AN ARREST WARRANT. Security officers will provide all information of which they are aware relating to the incident to the Waterfront Commission. The information provided shall be factual in order for the company to make the proper decision concerning an arrest warrant;

Appearance

(40) when in uniform, be neat and clean in appearance, and when on duty, the security officer shall wear the complete uniform as prescribed by the Waterfront Commission. Proper neatness and cleanliness in appearance means that:

(i) leather and brass will be polished;

(ii) shoes will be shined;

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(iii) hair will be neatly cut and combed and hair should be worn so as to prevent it from standing out when the cap or hat is worn, or extending below the top of shirt or jacket collar; reasonable accommodation on the basis of religious beliefs or for substantiated medical reasons will be considered on a case-by-case basis. Exceptions for medically approved dermatological reasons require a statement from a physician. Management may periodically request certification that the medical condition still exists;

(iv) the uniform will be pressed. It may be cleaned by washing or dry cleaning, depending on employee preference;

(v) the uniform hat or cap will be worn squarely on the head;

(vi) the belt will be worn through the belt loops of the uniform trousers; and

(vii) no insignia, emblems, buttons, or items other than those issued or authorized by Waterfront Commission will be worn on or with the uniform;

Courtesy

(41) act courteously to all persons he encounters; the security officer usually is the first contact that a visitor has with a company, the manner in which the security officer greets the visitor, answers questions and provides necessary directions or guidance creates the important first impression; and

The Uniform

(42) only wear Waterfront Commission approved uniforms except when, upon request of an employer, the commission authorizes differently. The uniform is the basic item of the security officer. It should be worn with dignity and pride. The uniform identifies the security officer as a figure of authority.

(i) The security officer's uniform consists of:

(a) shirts - blue (navy) or white - long and short sleeve;

(b) winter jacket - orange with high-visibility;

(c) windbreaker - orange with high-visibility;

(d) vest - blue (navy) with green florescent outline;

(e) pants/trousers - blue (navy);

(f) hat - baseball cap blue (navy) with Waterfront Commission patch;

(g) watch hat - wool - blue (navy) - to be worn for outside duty in cool or cold climates;

(h) belt - black and must be worn within the belt loops of the uniform trousers;

(i) boots or shoes - black;

(j) flashlight, standard maglight;

(k) badge - only the Waterfront Commission badge which must be worn on the outmost garment; and

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(l) non-issue items: socks - black solid color socks will be worn with the uniform. If a person, because of a foot problem, must wear white socks, they will obtain those with white feet and dark tops; and

(m) with the approval of the commission, where deemed appropriated, a blue (dark) jump suit may be worn. Such a jump suit must be worn in conjunction with a safety vest.

(ii) The uniform shall not be worn, complete or in part, while off duty except as necessary to commute to and from the assigned place of duty.

§5.23**Section 5.20 Interfering with the duties of port watchmen.**

No person shall, without justification or excuse in law, directly or indirectly, intimidate or inflict any injury, damage, harm, loss or economic reprisal upon any port watchman in the performance or discharge of his duties or obligations.

Hiring of Security Officers and Supervisory Security Officers**Section 5.21 Construction.**

(a) Sections 5.21 through 5.34 of this Part, inclusive, are designed to effectuate the purposes of the Waterfront Commission Act, as amended and supplemented and to prevent the circumvention and evasion thereof. In particular, these sections are designed to improve the conditions under which security officers and supervisory security officers are employed, to eliminate irregularity of employment, and, in accordance with the public policies of the States of New York and New Jersey, and to provide fair and equal employment opportunities by establishing a systematic method of hiring and providing adequate information to port watchmen as to availability of employment opportunities and to waterfront employers as to the available port watchmen within the port.

(b) Sections 5.21 through 5.34 of this Part, inclusive, are not designed and should not be construed to be in conflict with the provisions of article XV of the Act.

Section 5.22 Definitions.

(a) Regular security officers shall mean security officers or supervisory security officers who are entitled to receive first priority of employment by a particular employer.

(b) Extra security officers shall mean security officers or supervisory security officers who are entitled to receive employment by a particular employer after regular available security officers are employed by that employer.

(c) Casual security officers shall mean any regular or extra security officers or supervisory security officers who are not employed by their regular employer on a particular day.

Section 5.23 Employers subject to regulation.

Any person, including carriers of freight by water and stevedores, any parent or subsidiary thereof, or any person who has a contract with such carrier of freight by water or stevedore to provide or to perform services as a guardian or protector of property on any pier or waterfront terminal, is subject to the provisions of sections 5.21 through 5.34 of this Part, inclusive, except when employing inland security officers.

§5.24**§5.30****Section 5.24 Establishment of security officer lists.**

(a) Any employer may, in accordance with sections 5.35 through 5.41 of this Part, inclusive, file lists of his regular security officers and supervisory security officers and extra security officers and supervisory security officers. Each list shall include the name, license number and seniority classification of each individual listed.

(b) Any name on any regular list shall not appear on any other regular list filed with the commission.

(c) If such lists are accepted by the commission, copies thereof shall be maintained at the appropriate employment information center.

Section 5.25 Additions to security officer lists.

An employer may file on commission forms to add a security officer or supervisory security officer to a regular or extra list or fill a vacancy thereon from employees who are available and qualified, in accordance with sections 5.35 through 5.41 of this Part, inclusive.

Section 5.26 Rejection of lists, replacements and additions.

The commission may reject any list, in whole or in part, or any replacement or addition to any list, if it determines that such list or part thereof, or any replacement or addition thereto, was not made in conformance with this Part or in accord with the act.

Section 5.27 Removal from lists.

Any person may be removed from a list:

(a) at their own request;

(b) at the request of the employer who applied for his listing;

(c) upon the suspension or revocation of his license; or

(d) where the commission determines that he was not listed in conformance with this Part, or that such removal will further the purposes of the act.

Section 5.28 Corrections and restorations to lists.

Any person eligible for inclusion in any list filed with the commission who was omitted or who was subsequently removed from such list, pursuant to section 5.27 of this Part, may be included or restored to such list upon application by the employer if the commission determines that sufficient cause exists for such inclusion or restoration.

Section 5.29 Reporting employment opportunities.

Each employer shall each day provide the appropriate employment information center with general information of employment opportunities expected to be available the following work day for casual security officers. Such information shall be maintained in the appropriate employment information center.

Section 5.30 Ordering from lists.

An employer may employ security officers and supervisory security officers from his regular and extra security officer lists filed with the commission in accordance with sections 5.35 through 5.41 of this Part, inclusive.

Section 5.31 Filing employment reports.

Each employer shall file on Tuesday of each week with the appropriate employment information center, on forms furnished or approved by the commission, an employment report, setting forth for each pier or terminal the names, license numbers and dates and hours of employment of all security officers and supervisory security officers hired during the preceding week ending on 12 midnight on Sunday, and indicating thereon those security officers, hired as casual security officers.

Section 5.32 Employment of casual security officers.

(a) All casual security officers (as defined by section 5.22 of this Part) must be employed through the appropriate employment information center.

(b) A casual security officer may notify the appropriate employment information center prior to 1 p.m. of his availability for employment for a 4 p.m. to 12 midnight tour that day, and prior to 3 p.m. of his availability for employment for a 12 midnight to 8 a.m. or a 8 a.m. to 4 p.m. tour the following day. Between 1 p.m. and 2:30 p.m. a representative of an employer shall select in accordance with sections 5.35 through 5.41 of this Part, inclusive, casual security officers for the 4 p.m. to 12 midnight tour that day and between 3 p.m. and 5 p.m. casual security officers for the 12 midnight to 8 a.m. or 8 a.m. to 4 p.m. tours the following day, from among casual security officers who have previously notified the appropriate employment information center of their availability.

(c) A casual security officer may notify the appropriate employment information center from 12 noon to 3 p.m. on Friday of his availability for employment on Saturday, Sunday or the 12 midnight to 8 a.m. tours on Monday. After 3 p.m. on Friday a representative of an employer shall select, in accordance with sections 5.35 through 5.41 of this Part, inclusive, casual security officers for Saturday, Sunday or for the 12 midnight to 8 a.m. or 8 a.m. to 4 p.m. tours on Monday, from among casual security officers who have previously notified the appropriate employment information center of their availability.

(d) If Monday is a holiday, a casual security officer may notify the appropriate employment information center from 12 noon to 3 p.m. on Friday of his or her availability for employment for a 4 p.m. to 12 midnight tour on Monday or the 12 midnight to 8 a.m. or 8 a.m. to 4 p.m. tours on Tuesday. For holidays falling on other weekdays, a casual security officer may notify the appropriate employment information center prior to 3 p.m. on the day prior to the holiday of his availability for employment on the holiday or for the 12 midnight to 8 a.m. or 8 a.m. to 4 p.m. tours for the day after the holiday. After 3 p.m. on Friday, if the holiday is on Monday or after 3 p.m. on the day before the holiday, if the holiday falls on another weekday, a representative of an employer shall select, in accordance with sections 5.35 through 5.41 of this Part, inclusive, casual security officers for employment on the holiday for the 12 midnight to 8 a.m. or 8 a.m. to 4 p.m. tours on the day after the holiday from among the casual security officers who have previously notified the appropriate employment information center of the availability.

(e) A casual security officer may also make himself available for work at other times in which case he will be added to the availability list in proper seniority order for subsequent hiring. Representatives of employers may select casual security officers for employment in accordance with sections 5.35 through 5.41 of this Part, inclusive, at other times to meet unforeseen needs.

Section 5.33 Extension of employment for casual security officers.

The employer may extend the employment of a casual security officer on a day-to-day basis to complete his original assignment on successive days by notifying the appropriate employment information center.

Section 5.34 Emergency hiring.

When an emergency situation exists which makes it impossible for an employer to comply with the provisions of these regulations for the employment of a casual security officer, such employer may employ the casual security officer without complying with such section, provided he immediately thereafter notifies, in writing, the appropriate employment center of such hiring and states in detail the circumstances requiring such emergency hiring and the name and license number of any casual security officer so employed.

Priorities**Section 5.35 Construction of priorities.**

In accordance with the provisions of article XV of the Waterfront Commission Act, the following priorities of employment are designed to be consistent with the priorities established in the seniority article of the collective bargaining agreement between the New York Shipping Association and the Port Police and Guards Union. The listing of these priorities shall not be construed to limit in any way the right of the parties to the collective bargaining agreement to alter, modify, amend or otherwise change such priorities or agree upon any other method for the selection of licensed employees by way of seniority, experience, or otherwise.

Section 5.36 Ordering from regular security officer lists.

Qualified employees from regular security officer lists shall be selected in accordance with their seniority classification with the employer.

Section 5.37 Ordering from extra security officer lists.

After all individuals on the regular security officer lists are employed, the company shall employ qualified individuals from the extra security officer list in accordance with their seniority classification with the employer.

Section 5.38 Selection of casual security officers.

Qualified casual security officers shall be selected in accordance with their seniority classification in the industry. For purposes of section 5.31 of this Part, if two or more casual security officers have the same seniority, the casual security officer with the lower commission license number will be entitled to priority in hiring.

Section 5.39 Additions to regular security officer lists.

Additions to regular security officer lists shall be selected in the following order from:

- (a) qualified individuals on the employers' extra security officers list; or
- (b) from available qualified individuals on the basis of seniority in the industry.

Section 5.40 Additions to extra security officer lists.

Additions to extra security officer lists shall be made from among available qualified individuals on the basis of seniority in the industry.

§5.41**§5.41****Section 5.41 Ordering by special agreement.**

Where there exists a special agreement concerning the preferential order of hiring of security officers or supervisory security officers, such agreement shall be submitted in writing to the commission by the parties thereto. If the commission determines that such agreement is not inconsistent with the laws of the United States, the laws of the States of New York and New Jersey and the objectives of the Waterfront Commission Act, such preferential order of hiring may be instituted in the appropriate employment information centers.

Part 6 - Application and Revocation Proceedings

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L. 1953, ch. 202; Unconsolidated Laws, § 9810[7]

Section

- 6.1 Opportunity to be heard; institution of proceedings**
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- 6.3 Service of notice of hearing, orders and other communications**
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- 6.17 Petition for rehearing**
- 6.18 Petition for reconsideration**
- 6.19 Petition for restoration of license or registration**
- 6.20 Petition for leave to reapply**

Section 6.1 Opportunity to be heard; institution of proceedings.

(a) The commission shall not deny any application for a license or registration, nor revoke, cancel or suspend any license or registration, without giving the party in interest an opportunity to be heard.

(b) Proceedings to revoke, cancel or suspend a license or registration may be instituted by the commission on its own initiative or on complaint of any person, including any public official or agency.

Section 6.2 Notice of hearing.

The notice of the hearing shall be in writing and shall state the time and place of and the matters to be considered at the hearing, and shall be served at least 10 days prior to the date of the hearing upon the party in interest.

Section 6.3 Service of notice of hearing, orders and other communications.

The notice of hearing and all other notices, orders and communications from the commission shall be duly served if enclosed in a properly postpaid wrapper, addressed to the person to be notified or communicated with at the address last given by him in writing to the commission, and deposited, as ordinary mail, in a post office, post office box or mail chute maintained by the United States government, or if such notice, order or communication addressed to such person is delivered to such address by telegram or by registered or certified mail or by an employee or agent of the commission. A certificate by an employee or agent of the commission that such notice, order or communication has in the regular course of the business of the commission been duly dispatched or delivered, in a manner authorized by this section, shall be presumptive evidence of proper service. For the

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purpose of calculating the time of notice, service shall be considered effected upon the date of delivery to such address; provided that, where service is by ordinary mail, service shall be considered effected the third day after the mailing.

§6.10**Section 6.4 Personal appearance; representation by attorney.**

Any party in interest who intends to avail himself of the opportunity to be heard, shall personally appear on the date set forth in the notice of hearing or on any adjourned date and shall be prepared to proceed. Any such party may be represented at the hearing by an attorney who is a member in good standing of the Bar of the State of New York or the Bar of the State of New Jersey. Any such attorney shall file a written notice of appearance on a form furnished by the commission. After an attorney has so appeared, all further notices, orders and other communications from the commission may be served upon such attorney and such service shall be deemed to be service upon the party in interest.

Section 6.5 Hearing officers; assignment of hearings.

Where the commissioners themselves do not conduct a hearing, it shall be conducted by a hearing officer to be known as an administrative judge appointed by and directly responsible to the commissioners who shall be an attorney-at-law in either the State of New York or New Jersey. Hearings shall be assigned to a particular administrative judge by the commission or by a designee of the commission.

Section 6.6 Hearings to be public; stenographic records of hearing.

Unless otherwise ordered by the commission in the public interest, application and revocation hearings held by the commission shall be open to the public. Stenographic records of hearings shall be made and transcripts thereof may be furnished to any person after the conclusion of the hearing upon payment to the commission of the reproduction costs thereof as established by section 1.23(f) of this Title.

Section 6.7. Application for adjournment.

Any application for an adjournment made on or after the date fixed for hearing shall be made to the administrative judge and shall set forth in detail the grounds therefor.

Section 6.8 Amendment of notice of hearing.

The notice of hearing may be amended upon application by commission staff counsel to the administrative judge at any time prior to the conclusion of the hearing. If such application is granted, the administrative judge may, in his discretion, grant additional time to the party for further preparation.

Section 6.9 Conduct of hearing; powers of administrative judge.

The administrative judge shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure in the conduct of hearings. He shall have authority to administer oaths, issue subpoenas, rule upon offers of evidence and otherwise so regulate the course of the hearing as to preserve fundamental concepts of fairness and to effectuate the purposes and provisions of the Act.

Section 6.10 Opportunity to testify and cross-examine; issuance of subpoenas.

A party shall be afforded reasonable opportunity to present testimony under oath or other evidence relevant and material to the subject matter of the hearing and to cross-examine any witnesses who testify at such hearing. At the request of a party, the administrative judge shall issue subpoenas to compel the attendance of witnesses and the giving of testimony or production of other evidence upon behalf of such party, provided such party shall effect his own service.

Section 6.11 Affidavits, sworn statements and interrogatories.

(a) If at the time of hearing a witness is outside the State of New York or New Jersey or is deceased, commission counsel or a party may offer as evidence at the hearing an affidavit or sworn statement of such witness. Such affidavit or sworn statement shall be admissible into evidence as an exhibit, if the statements therein are otherwise competent, relevant and material. The administrative judge shall give the exhibit such weight as the administrative judge, in his discretion, determines that it warrants in the light of all the evidence.

(b) Where it has been determined that a witness who is outside the State of New York or New Jersey will voluntarily answer interrogatories, commission staff counsel or a party may propound interrogatories to be answered by such witness and the other side shall have the opportunity to propound cross-interrogatories as prescribed herein.

(c) The interrogatories and cross-interrogatories shall be settled and forwarded by the administrative judge to be answered in writing and subscribed to under oath by such witness. Upon application to the commission, the commission may make an order providing for the taking of such witness' oral testimony pursuant to the settled interrogatories by a person designated by the commission. The expenses of taking such testimony shall be borne by the applicant therefor unless the commission provides otherwise.

Section 6.12 Oral argument; briefs.

Oral argument shall be made only before the administrative judge and shall be included in the record of the hearing. Briefs as to facts or law may be received and may be required to be submitted. The administrative judge may fix the time within which briefs shall be filed. Briefs received subsequent to such time need not be considered.

Section 6.13 Administrative judge's report; exceptions to report.

Upon the conclusion of a hearing the administrative judge shall, by written memorandum to the commission, set forth his findings and recommendations for action by the commission thereon. A copy of such findings and recommendations shall be served on the parties in interest and furnished to commission counsel, and each may submit written exceptions thereto and written argument thereon within 10 days after service of such findings and recommendations. A copy of the exceptions and arguments shall be served upon each of the other parties in interest or commission counsel, as the case may be. Replies to exceptions and argument may be served in like manner within five days after service of such exceptions and arguments. Unless the commission grants an extension of time, exceptions, argument or replies submitted after the prescribed time need not be considered by the commission.

Section 6.14 Final determination made by commission.

The record of the hearing, together with the memorandum of the administrative judge and any exceptions or argument duly submitted, shall be transmitted to the commission for final determination and order.

Section 6.15 Petition to reopen hearing.

After the conclusion of a hearing but prior to the making of an order by the commission, a hearing may, upon petition and in the discretion of the administrative judge, be reopened for the presentation of new or additional evidence. Such petition to reopen the hearing shall state in detail the nature of the new or additional evidence, together with the reasons for the failure to submit such evidence prior to the conclusion of the hearing. The commission may upon its own motion and upon reasonable notice reopen a hearing for the presentation of new or additional evidence.

Section 6.16 Commission orders.

All orders of the commission shall be in writing and shall be filed with the secretary of the commission who shall cause certified copies thereof to be served upon the parties.

Section 6.17 Petition for rehearing.

Upon petition, after the making of an order by the commission following a hearing, rehearing may be granted in the discretion of the commission. A petition for rehearing shall state in detail the grounds upon which it is based and shall separately set forth each error of law and fact alleged to have been made by the commission in its determination, together with facts and arguments in support thereof. Such petition shall be filed with the commission not later than 30 days after service of the order of the commission upon the parties, unless the commission for good cause shown shall otherwise direct. The commission may upon its own motion grant a rehearing after the making of an order following a hearing.

Section 6.18 Petition for reconsideration.

Within 90 days after the service of an order of the commission following a hearing or rehearing, which order shall be considered as a final determination of the commission in a proceeding for judicial review, the applicant or respondent may petition the commission to exercise its discretion to reconsider its determination. Such petition shall be in writing and shall state in detail the grounds upon which it is based. Any order made by the commission upon such petition shall not extend any limitation of time imposed by law to commence a proceeding to review the final determination of the commission.

Section 6.19 Petition for restoration of license or registration.

(a) Any person having been issued a temporary permit or registration or permanent license or registration by the commission and whose temporary permit or registration has been revoked or annulled by an order of the commission denying an application for a permanent license or registration after a hearing or rehearing or whose permanent license or registration has been revoked by order of the commission after a hearing or rehearing may petition the commission for restoration of his permit, license or registration. Such petition shall be in writing on a form to be furnished by the commission and shall be filed with the commission not less than six months after the final determination of the commission made after the hearing or rehearing and not more often than once each year following the said final determination, unless the commission for good cause shown shall otherwise direct. Any registration, permit or license issued by the commission after a grant of a petition under this section may be subject to the provisions of section 1.21(b)-(i) of this Title.

(b) No petition for restoration shall be accepted from any person seeking restoration unless the person is sponsored for employment by a "stevedore" or by any "person," within the meaning of those terms contained in the act, who is an employer of individuals requiring a registration or a license under the act, and where proof of sponsorship has been received by the commission, prior to submission to the commission of said petition, in the form of a letter submitted by the sponsoring employer.

§6.20**§6.20****Section 6.20 Petition for leave to reapply.**

Any applicant, not having been issued a temporary permit or registration, who has been denied a license or registration by order of the commission after a hearing or rehearing, and who has not been granted leave to reapply in the said order of denial, may petition the commission for leave to reapply for such license or registration. Such petition shall be in writing on a form to be furnished by the commission and shall be filed with the commission not less than six months after the final determination of the commission made after the hearing or rehearing and not more often than once each year following the said final determination, unless the commission for good cause shown shall otherwise direct. A grant by the commission of a petition submitted under this section for leave to reapply for inclusion in the "deep-sea" register as a longshoreman or checker during any period of time the acceptance of such applications has been suspended under section 5-p of the act shall not take effect until such time as the commission shall determine to accept such applications under said section 5-p and shall not entitle the petitioner to any preference or priority in obtaining any such application or in having it processed.

Part 7 - Hiring Regulations for Registrants

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L. 1953, ch. 202; Unconsolidated Laws, § 9810[7]

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General Provisions

Section 7.1 Construction.

(a) This Part is designed to effectuate the purposes of the Act, as amended and supplemented, and to prevent the circumvention and evasion thereof. In particular, it is designed to improve the conditions under which waterfront labor is employed, to eliminate irregularity of employment, fear and insecurity, and, in accordance with the public policies of the States of New York and New Jersey, to provide fair and equal employment opportunities, by establishing a systematic method of hiring and providing adequate information to waterfront workers as to the availability of employment opportunities and to waterfront employers as to the available labor supply within the port.

(b) This Part contains provisions which give waterfront employers the privilege of ordering employees for hire without the personal appearance of such employees at the commission employment information centers, on condition that the employers file with the commission lists of persons they regularly employ on their piers and follow the procedures set forth in this Part for the ordering of their regular and casual employees.

(c) This Part is not designed and should not be construed to be in conflict with the provisions of article XV of the Act.

Section 7.2 Definitions.

As used in this Part:

(a) Regular employees shall mean employees who, as individuals, are entitled to receive first priority of employment at a particular pier or waterfront terminal or with a particular employer.

(b) Supervisory employees shall mean employees who lead, manage and/or supervise other employees, and shall include but are not limited to foremen, assistant foremen, hatch foremen (also known as hatch bosses), dock foremen, stevedore foremen and gangwaymen. Supervisory employees at passenger ship terminals shall include clerk/checker dock bosses, chief clerks, baggage masters and/or those who oversee and direct checkers in the accounting and positioning of baggage for loading and/or discharge.

(c) Gang shall mean a group of longshoremen constituted into a working unit.

(d) Regular gang shall mean a gang which is entitled to receive first priority of employment at a particular pier or waterfront terminal.

(e) Regular-extra gang shall mean a gang which is entitled to receive employment at a particular pier or waterfront terminal after available regular gangs have been employed.

(f) Extra gang shall mean a regular or regular-extra gang not employed on a particular day by the employer listing it as a regular or regular-extra gang.

(g) Voluntary gang shall mean a gang established by the commission on its own initiative, where, in its opinion, such action will further the purposes of the Act.

(h) Section shall mean a geographical division of the port.

(i) Borough or area shall mean a geographical division of the port consisting of one or more sections.

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(j) New pier shall mean any pier or terminal which has not regularly been in operation for the movement of waterborne freight within three calendar years prior to its opening.

(k) Reactivated pier shall mean any pier or terminal which has been in operation for the movement of waterborne freight within three calendar years of its reopening, including a newly constructed pier or terminal which has replaced one or more piers or terminals.

(l) Telecommunications system controller (TSC) shall mean a natural person, who is employed by the New York Shipping Association, Inc. and the International Longshoremen's Association, or by a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association, and who participates in the operation of the telecommunications hiring system (THS).

(m) Workday shall mean Monday through Sunday, for the purposes of the hiring procedures.

(n) Regular working day shall mean Monday through Friday [or Monday through Saturday, if hiring procedures are implemented which include Saturday as a "regular work day" in accordance with Section 7.19 of this Part], exclusive of holidays, for the purpose of the hiring procedures.

Section 7.3 Employers and employees subject to regulation.

Any person who employs a person included in the "deep-sea" register to perform work in his registered capacity and any person included in the "deep-sea" register are subject to the provisions of this Part.

Section 7.4 Longshoremen's register.

The longshoremen's register, as referred to in this Part, only applies to the "deep-sea" register.

Employee Listings**Section 7.5 Establishment of regular lists.**

(a) Any employer may, in accordance with section 7.29 through 7.40 of this part, inclusive, file lists on commission forms designating the pier or waterfront terminal for such list, for:

- (1) regular checkers and clerks, terminal labor, drivers, coopers, marine carpenters, maintenance men and other classifications of regular employees and supervisory employees; and
- (2) regular and regular extra gangs.

(b) An employer may employ persons as supervisory employees only if such persons are first made part of a regular supervisory employee list. No person shall be added to a regular supervisory employee list unless:

- (1) the selecting employer submits in writing to the commission a detailed, reasonable basis for the employer's belief that the selected employee best exhibits the capability to lead, manage and/or supervise other employees, which shall be the employer's independent determination, not based solely or primarily on the consultation with and/or input of the affected Local, the International Longshoremen's Association, and/or any other affected labor organization representing longshoremen for the purposes of collective bargaining; and

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(2) the selecting employer certifies that the employer's selection of the person as a supervisory employee was based on the employer's independent determination, not based solely or primarily on the consultation with and/or input of the affected Local, the International Longshoremen's Association, and/or any other affected labor organization representing longshoremen for the purposes of collective bargaining, and that the employer has not received any benefit and/or consideration from any person for the purpose of directly or indirectly influencing the employer's selection of the supervisory employee.

(c) For a period of five (5) years, any employer selecting a person to be added to supervisory employer list shall maintain any and all records evidencing the person's capabilities to lead, manage and/or supervise other employees, and any and all records concerning the employer's consultation with and/or input from the affected Local, the International Longshoremen's Association, and/or any other affected labor organization representing longshoremen for the purposes of collective bargaining, regarding the person's capabilities to lead, manage and/or supervise other employees.

(d) Unless a variance is granted by the commission, any name on any such list shall not appear on any other list filed with the commission, except with respect to supervisory employees whose name may appear on both a supervisory employee list and on the gang list in which they lead, manage and/or supervise other employees. No list shall contain names of persons to be employed at more than one pier or waterfront terminal unless a variance is granted by the Commission.

(e) If such lists are accepted by the commission, copies thereof shall be conspicuously posted and maintained by the employer on a bulletin board at the pier or terminal.

Section 7.6 Voluntary gangs.

Voluntary gangs may be established and included in the commission's register of gangs.

Section 7.7 Additions to regular lists.

(a) Before an employer shall add a gang to or fill a vacancy on a regular or regular-extra gang list or fill a vacancy on or enlarge a regular list the employer shall notify an employment information center on commission forms and post a copy thereof on the pier or terminal concerned for a period of not less than seven days. The commission shall also post a notice of such job opportunity in each employment information center.

(b) Any prospective employee seeking such listing shall report to the employer's hiring agent or pier superintendent at the pier or terminal where the vacancy exists and apply on an application form supplied by the employer and approved by the commission. At the end of the seven-day period of posting, the employer shall forward to the commission copies of all applications received during that period, together with a commission form upon which shall be entered the names and seniority classifications of all persons who applied during that period and a certification by the employer's hiring agent to the effect that all persons who sought such listing were furnished applications and that all applications received have been forwarded to the commission.

(c) All applications received by the employer after the seven-day period of posting shall be forwarded immediately to the commission, together with a similar listing and certification. At the time of forwarding applications to the commission, the employer shall also post at the pier or waterfront terminal copies of the forms listing the applicants. Copies of the forms listing the applicants shall also be posted in the appropriate employment information center by the commission. The employer may, after the seven-day period of posting, file to add a gang or fill a vacancy or add to a list from job applicants who have

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applied for the particular job opportunity contained in the notice and who are qualified and able to perform the duties of the job, in accordance with sections 7.29 through 7.40 of this Part, inclusive, certifying compliance with the pier posting requirements of this section. The employer shall post at the pier or waterfront terminal for a period of 30 days from the date of filing the names of all persons selected. The commission shall also post for a similar period of 30 days in the appropriate employment information center the names of all such persons selected. Such selections may only receive permanent approval by the commission after the expiration of the 30-day posting period.

(d) The provisions of this section shall not apply where an employer makes his selection from persons properly listed on any regular list previously filed with the commission for the particular pier or waterfront terminal pursuant to section 7.5 of this Part, provided the employer:

(1) makes his selection in accordance with sections 7.29 through 7.40 of this Part, inclusive; and

(2) files his selections at the appropriate employment information center on forms furnished by the commission; and

(3) posts at the pier or waterfront terminal for a period of 30 days the names of all such persons selected. The commission shall also post for a period of 30 days in the appropriate employment information center the names of all such persons selected. Such selections may only receive permanent approval by the commission after the expiration of the 30-day posting period.

Section 7.8 Replacements for voluntary gangs.

Before a vacancy may be filled in a voluntary gang, the foreman of such gang shall notify an employment information center on commission forms. The commission shall post a notice of such job opportunity in each employment information center for a period of not less than one week. Any person seeking such listing shall apply on commission forms through an employment information center. After the posting for one week, the commission shall forward all such job applications to the foreman of the gang. Such vacancy shall be filled by written request signed by a majority of the members of the gang from such job applications in accordance with sections 7.29 through 7.40 of this Part, inclusive.

Section 7.9 Rejection of lists, replacements and additions.

The commission may reject any list, in whole or in part, or any replacement or addition to any list, if it determines that such list, or part thereof, or any replacement or addition thereto, was not made in conformance with this Part, or in accord with the Act.

Section 7.10 Removal of persons from lists; removal of gangs from register.

(a) Any person may be removed from a list:

(1) at his own request;

(2) at the request of the employer who applied for his listing;

(3) for good cause upon the written request of the majority of the members of a voluntary gang;

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(4) upon his suspension, revocation or other removal from the longshoremen's register for a period of more than 30 days. A person so removed may be reinstated to his position on said list upon reinstatement to the longshoremen's register, notwithstanding the provisions of section 7.7 of this Part;

(5) where the commission determines that he was not listed in conformance with this Part, or that such removal will further the purposes of the Act.

(b) A gang may be removed from the register of gangs:

(1) upon the written request of the majority of its members;

(2) upon the request of the employer who applied for its listing; or

(3) where the commission determines that such gang was not listed in conformance with this Part, or that such removal will further the purposes of the Act.

Section 7.11 Corrections and restorations to lists.

Any person eligible for inclusion in any list filed with the commission who was omitted or who was subsequently removed from such list pursuant to section 7.10 of this Part may be included or restored to such list upon application by the employer if the commission determines that sufficient cause exists for such inclusion or restoration. Any person removed from a voluntary gang pursuant to section 7.10 of this Part may be restored for good cause to such gang by the commission.

Hiring Procedures**Section 7.12 Establishment of telephonic hiring system.**

In addition to other provisions concerning the ordering of persons without their personal appearance at an employment information center, the commission, in the implementation of a telecommunications hiring system (THS) through which longshoremen and checkers may be hired and accept employment without any personal appearance, may designate one or more of the employment information centers it is authorized to establish and maintain under article VII of the act as a Telephonic Hiring Employment Information Center (THEIC). Such a THEIC has been established at the commission office located at 333 Thornall Street, Third Floor, Edison, NJ 08837.

Section 7.13 Reporting employment opportunities.

Each employer shall each workday before 2:30 p.m. provide the THEIC with a list of the number of gangs and other classifications prevalidated and general information of employment opportunities expected to be available the following workday for each classification of registered personnel. Such information shall be posted or otherwise made available in each employment information center; when employment is anticipated for a Sunday, Monday, or a holiday falling on any workday, the requirements of this section shall be fulfilled on the preceding regular working day.

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§7.14**§7.16****Section 7.14 Prevalidation ordering from regular lists.**

An employer may order employees on regular lists as follows:

(a) not later than 1:45 p.m. each workday, the employer shall notify the THEIC as to which of its regular and regular-extra gangs and list employees it intends to order during the following 24-hour period and employees and gangs so ordered may report directly to the pier or terminal for work;

(b) not later than 4 p.m. each workday, the employer shall indicate on the bulletin board at the pier or terminal those employees and gangs ordered for employment during the following 24-period hours;

(c) when employment is anticipated for a Saturday [if hiring procedures are not implemented which include Saturday as a "regular work day" in accordance with Section 7.19 of this Part], Sunday, Monday, or a holiday falling on any workday, the requirements of subdivisions (a) and (b) of this section shall be fulfilled on the preceding regular working day;

(d) when employment is anticipated for a workday following any holiday, the requirements of subdivisions (a) and (b) of this section shall be fulfilled on the last regular working day preceding the holiday;

(e) where an employer cancels the employment of an employee or a gang, it shall notify the THEIC no later than 7 a.m. on the workday the employee or gang was to report for employment.

Section 7.15 "Quick registration"; weekend casual checkers; limitations.

(a) After satisfying the requirements of section 7.14(a) of this Part and prior to 2:30 p.m., the employer may order ("quick register") individual members of its gangs or lists, not previously validated for the following workday, as dock or terminal employees or as replacements in gangs in accordance with sections 7.29 through 7.40 of this Part, inclusive.

(b) A checker may telephone the THEIC on Friday between 9 a.m. and 10 10 a.m. to make himself available on the checker voluntary list for weekend employment at terminals handling baggage (cruise ship or passenger ship terminals). A hiring agent may employ by "quick registration," on Friday before 2:30 p.m., a casual checker who has made himself so available.

(c) Except for provisions of subdivision (b) of this section, the "quick registration" procedure may only be used to hire list or gang members for employment at their own pier or terminal. The procedure is not to be used for ordering or extending other registrants unless written permission is granted by the commission.

(d) Not later than 4 p.m. each workday, the employer shall indicate on the bulletin board at the pier or terminal those employees who have been "quick registered" for employment during the following 24-hours period.

Section 7.16 Recall of regular and regular-extra gangs.

An employer may retain a regular or regular-extra gang for employment, even though the gang has been previously released by such employer and ordered for employment by another employer, provided the regular employer certifies to the commission that:

(a) circumstances have arisen which prevent the completion of the work assignment for the regular employer; and

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(b) the regular employer has notified the prospective employer at least one hour in advance of the time the gang was to report to the prospective employer that it intends to retain its gang until the work assignment is completed.

Section 7.17 Ordering of additional gangs.

(a) Each gang not reported pursuant to section 7.14(a) of this Part shall be posted as a gang not previously ordered and may be ordered as an additional gang (including voluntary or extra gangs).

(b) Prior to 2 p.m. a hiring agent shall personally order additional gangs from the gangs not previously ordered through the THEIC and so notify the center staff.

(c) An additional gang may be continued in employment in the same manner as the employer's regular and regular-extra gangs pursuant to section 7.14 of this Part.

Section 7.18 Extension of employment; use, procedure and prohibited practices.

(a) When a person employed pursuant to sections 7.19 and 7.20 of this Part is required by his employer for successive days to complete his original assignment, the employer may extend the employment on a day-to-day basis, but not beyond Friday of the same week. Where the original assignment is not completed by Friday, the employer may continue such employment for Saturday, and, if necessary, from Saturday to Sunday only by receiving specific written permission of the commission for each said day.

(b) Not later than 3 p.m. each workday the employer shall, on commission forms posted on the bulletin board at the pier or terminal, indicate those persons whose employment it is extending for the following 24 hours and shall furnish such names to the employment information center by 3 p.m.

(c) Any such extension shall be accomplished in the following manner: for each person to be extended, the employer, through its hiring agent, shall certify on a commission form, the name, registration number, classification and seniority of the registrant to be extended, the specific duty assignment performed and to be performed by the registrant and the location of said duty assignment performed and to be performed.

(d) When employment is anticipated for a Sunday, Monday, or a holiday falling on any workday, the requirements of subdivision (b) of this section shall be fulfilled on the preceding regular working day.

Section 7.19 Prior day ordering (PDO) of registrants not otherwise prevalidated.

An employer may prior day order (PDO) any registrant for employment, except for employment as a supervisory employee, who was not otherwise prevalidated in the following manner:

(a) Between 2:30 p.m. and 3:30 p.m. on the prior regular working day, waterfront employers, through hiring agents and through the THEIC, may order casuals for employment the next workday.

(b) Between 2:30 p.m. and 3:30 p.m. on Friday afternoon [or Saturday afternoon, if hiring procedures are implemented which include Saturday as a "regular work day" in accordance with this Section], waterfront employers, through hiring agents and through the THEIC, may order longshore casuals for any shift on Saturday [if hiring procedures are not implemented which include Saturday as a "regular work day" in accordance with this Section], Sunday or Monday, and may order checker casuals for any shift on Monday.

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(c) Between 2:30 p.m. and 3:30 p.m. on the last regular working day prior to a holiday, waterfront employers, through hiring agents and through the THEIC, may order casuals for any shift on the holiday or the workday following the holiday.

(d) Such selection shall be made from a complete list of available registrants possessing the particular qualification needed.

(e) Such selection shall be made in accordance with the seniority priorities as contained in sections 7.29 through 7.40 of the Part, inclusive.

(f) A list of registrants so selected shall be posted at the pier or terminal and the appropriate employment information center.

Section 7.20 Obtaining employment information, availability for employment; hiring (regular working days).

(a) Between 4 p.m. and 8 p.m. on Mondays through Thursdays [or Fridays, if hiring procedures are implemented which include Saturday as a "regular work day" in accordance with Section 7.19 of this Part] (except on holidays), longshoremen and checkers may telephone the THEIC to ascertain if they have been ordered for work that evening or at any time during the next workday. Between 4 p.m. and 8 p.m. on Fridays [or Saturdays, if hiring procedures are implemented which include Saturday as a "regular work day" in accordance with Section 7.19 of this Part] (except on holidays), longshoremen and checkers may telephone the THEIC to ascertain if they have been ordered for work that evening or at any time on Saturday [if hiring procedures are not implemented which include Saturday as a "regular work day" in accordance with Section 7.19 of this Part], Sunday and/or Monday, and/or Tuesday if Monday is a holiday. Any such telephone call, shall make the individual caller, who has no orders for the next weekday, regular working day, available for employment at the 7 a.m. or 8 a.m. hiring on the next weekday regular working day. During such call, individuals who do not have orders for the next weekday regular working day shall designate a telephone number where they may be reached between the hours of 8 a.m. and 9 a.m. during the next weekday regular working day morning, if that telephone number is different from the individual's usual telephone number maintained in the THS data base.

(b) Between 8 a.m. and 9 a.m. on the next weekday regular working day morning, those individuals who made themselves available for work on the prior weekday regular working day between 4:00 p.m. and 8 p.m., may be hired by hiring agents, in accordance with seniority (sections 7.29 through 7.40 of this Part), except for employment as a supervisory employee, by qualification to fill in for absentees or to fill emergency requirements. Said individuals may be advised of such employment by telecommunications system controllers by telephone provided that said advice is made in registration number sequence by seniority and qualifications and is in accordance with section 7.44 of this Part.

(c) Prior to selecting any such longshoreman or checker for employment, each hiring agent shall notify the THEIC of the number of longshoremen and checkers he intends to employ. This number may be revised by the hiring agent at any time prior to the time he commences hiring according to seniority in the industry, as stated in sections 7.29 through 7.40 of this Part, inclusive. The hiring agent may employ only such number of longshoremen and checkers he has stated he intends to employ, as revised. In the event additional persons are needed after the hiring agent has commenced hiring according to seniority in the industry, the hiring agent shall notify the THEIC of such additional needs. He may then hire such additional longshoremen and checkers he has declared as needed only after all other hiring agents have had an opportunity to select the number of longshoremen and checkers they have declared as needed before they commenced hiring according to seniority in the industry and only if permitted under the applicable collective bargaining agreement. To fill his employer's requirements, a hiring agent shall make his selection from among such persons who have made themselves available in accordance with this section and in accordance with sections 7.29 through 7.40 of this Part inclusive, during the designated hiring period.

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(d) No hiring agent shall knowingly hire, or attempt to hire, any person registered by the commission under any circumstances or at any time during the hiring process when such person's seniority classification would not ordinarily entitle him to receive said employment.

§7.22**Section 7.21 Other weekday regular working day availability and hirings.**

(a) From 9 a.m. to 12:45 p.m. Monday through Friday (except on holidays) longshoremen and checkers may telephone the THEIC to voluntarily make themselves available for employment at 10 a.m., 1 p.m. and 3 p.m. on that day. Said individuals shall leave a telephone number where they can be reached, if that telephone number is different from the individual's usual telephone number maintained in the THS data base.

(b) From 4:00 p.m. to 6:45 p.m. Monday through Friday (except on holidays) longshoremen and checkers may telephone the THEIC to voluntarily make themselves available for employment at 7 p.m. and 11 p.m. on that day. Said individuals shall leave a telephone number where they can be reached, if that telephone number is different from the individual's usual telephone number maintained in the THS data base.

(c) A hiring agent may fill his employer's requirements, except for requirements for supervisory employees, from those registrants who made themselves available for 10 a.m., 1 p.m., 3 p.m., 7 p.m. or 11 p.m. employment, by selecting said registrants in accordance with seniority and by qualifications through the telephonic hiring system. Telecommunications system controllers may advise registrants of such employment in accordance with section 7.20(b) of this Part.

Section 7.22 Availability for weekend and holiday employment; weekend and holiday hirings; obtaining holiday employment information.

(a) Between 7 a.m. and 8 a.m. on Saturday, a longshoreman may telephone the THEIC to volunteer for any shift on Saturday and/or Sunday and shall leave a telephone number where he may be reached, if that telephone number is different from the longshoreman's usual telephone number maintained in the THS data base.

(b) Between 4 p.m. and 8 p.m. on the last regular working day before a holiday, longshoremen may telephone the THEIC for work orders for any shift on the holiday or the day following the holiday. A longshoreman who has not received any such orders may, between 7 a.m. and 8 a.m. on the day of a holiday when casual hiring will be conducted, may telephone the THEIC to volunteer for any shift on the holiday and shall leave a telephone number where he may be reached, if that telephone number is different from the longshoreman's usual telephone number maintained in the THS data base.

(c) A hiring agent may fill his employer's requirements, except for requirements for supervisory employees, from those longshoremen who made themselves available for weekend or holiday employment, by selecting such longshoremen in accordance with seniority and by qualification through the telephonic hiring system. Telecommunications system controllers may advise registrants of such employment in accordance with section 7.20(b) of this Part.

(d) With respect to casual checker weekend employment between 9 a.m. and 11 a.m. on Friday, or Thursday if Friday is a holiday, a checker may telephone the THEIC to make himself available on the checker voluntary list for employment on Saturday and/or Sunday. In the event of an emergency, a hiring agent, for weekend work, may order a checker on his employer's list, and shall post-validate the hiring at an employment information center on the next regular working day stating, in writing, on a commission form, the nature of the emergency.

Section 7.23 Reporting absenteeism.

(a) The employer, through its hiring agent, shall notify the employment information center in writing on the appropriate commission form and shall record in the telephone hiring system data base, by 9 a.m. of the same workday, the failure of any person or gang to report for work as ordered for 7 a.m. or 8 a.m. employment; and shall further notify the employment information center in writing on the appropriate commission form within 24 hours of the failure of any person or gang to report for work as ordered for any other employment.

(b) Registered persons engaged in the recording or tabulation of the hours worked at piers or other waterfront terminals shall furnish accurate and timely absentee information to their employers.

Section 7.24 Registering and data base validation and certification.

The employment of any gang, list or individual pursuant to sections 7.13 through 7.22 of this Part shall be registered by an employer's hiring agent in the THS data base. Said hiring agent shall also certify to the commission, on an appropriate form, that any such employment is in accordance with this Part. Said form shall be submitted to the commission for validation.

Reactivated and New Piers**Section 7.25 Notice for establishing regular lists for reactivated and new piers.**

An employer shall give 30 days' notice to the commission prior to filing regular lists for a reactivated or new pier. The commission may reduce the time required for such notice. The commission shall post such notice in each employment information center for a period of not less than one week.

Section 7.26 Publication of prior lists for reactivated piers.

Upon receiving such notice with respect to a reactivated pier, as defined in section 7.2(j) of this Part, the commission shall furnish the employer with such prior regular lists as were duly approved by and on file with the commission at the time the pier's operation terminated and shall post copies of such lists for not less than one week in each employment information center. Any prospective employee whose name appears on any such list who seeks to be included on a regular list at the reactivated pier shall apply to the employer's hiring agent or pier superintendent on an application supplied by the employer and approved by the commission. Within five business days from the end of period of posting, the employer shall forward to the commission copies of all applications received during that period, together with a commission form upon which shall be entered the names and seniority classifications of all persons who applied during that period and a certification by the employer's hiring agent that all persons who sought such listings were furnished applications and that all applications received have been forwarded to the commission.

Section 7.27 Regular lists for reactivated piers.

At the time of filing applications pursuant to section 7.26 of this Part, the employer may select regular employees and members of gangs from job applicants qualified and able to perform the duties of the job, in accordance with sections 7.29 through 7.40 of this Part, inclusive, and file its original lists of regular employees and gangs in accordance with section 7.5 of this Part. The employer may select additional persons to complete its original lists for the reactivation of the pier in accordance with section 7.7 no later than 10 days after the initial filing of his lists.

Section 7.28 Regular lists for new piers.

Any prospective employee seeking inclusion in a regular list for a new pier shall apply to the employer's hiring agent or pier superintendent on an application supplied by the employer and approved by the commission. Within five business days from the end of the period of posting, the employer shall forward to the commission copies of all applications received during that period, together with a commission form upon which shall be entered the names and seniority classification of all persons who applied during that period and a certification by the employer's hiring agent that all persons who sought such listings were furnished applications and that all applications received have been forwarded to the commission. No later than 20 days after giving notice pursuant to section 7.25 of this Part, the employer may select regular employees and gangs from job applicants qualified and able to perform the duties of the job, in accordance with sections 7.29 through 7.40 of this Part inclusive, and file such lists in accordance with section 7.5 of this Part.

Priorities**Section 7.29 Construction of priorities.**

In accordance with the provisions of article XV of the Waterfront Commission Act, the following priorities of employment are designed to be consistent with the priorities established in the seniority article of the collective bargaining agreement between the New York Shipping Association, Inc. and the International Longshoremen's Association. The listing of these priorities shall not be construed to limit in any way the right of the parties to the collective bargaining agreement to alter, modify, amend or otherwise change such priorities or agree upon any other method for the selection of registered or licensed employees by way of seniority, experience, regular gangs or otherwise.

Section 7.30 Regular employee lists for reactivated piers.

(a) Each list for regular employees other than coopers, maintenance men and marine carpenters, at a reactivated pier shall be established from those persons on prior lists for such category who are available and willing to accept employment, on the basis of seniority at the pier or terminal. If pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry. Additions to such lists shall be made in accordance with the priorities for additions to the regular list of such category on existing piers.

(b) Coopers, maintenance men and marine carpenters shall be employed at a reactivated pier or at a pier at which their employer discontinued operations in accordance with their rights under applicable seniority agreements.

Section 7.31 Regular gang lists for reactivated piers.

(a) Regular gang lists at a reactivated pier shall be established from:

(1) former regular gangs on the basis of gang seniority at the pier, provided the gang is available for work and substantially intact;

(2) former regular-extra gangs on the basis of gang seniority at the pier, provided the gang is available for work and substantially intact; or

(3) members of former regular and regular-extra gangs in accordance with their seniority at the pier or terminal. Where pier seniority is equal, selection shall be made on the basis of seniority in the industry.

(b) Additions to regular gang lists shall be selected from the following:

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(1) regular and regular-extra gangs in the section, provided they are available for and willing to accept employment as intact gangs;

(2) longshoremen identified with the section in which the employer's pier or terminal is located on the basis of seniority in the industry; or

(3) regular and regular-extra gangs from other sections, provided they are available for and willing to accept employment as intact gangs.

§7.34**Section 7.32 Regular employee lists for new piers.**

Regular employee lists for new piers shall be established from longshoremen identified with the section in which the employer's pier or terminal is located on the basis of seniority in the industry.

Section 7.33 Regular gang lists for new piers.

Regular gang lists for a new pier shall be established from:

(a) regular and regular-extra gangs in the section, provided they are intact and available for and willing to accept employment; and, thereafter, from

(b) longshoremen identified with the section in which the employer's pier or terminal is located on the basis of seniority in the industry.

Section 7.34 Replacements and additions to regular employee lists.

Additions and replacements to regular employee lists, except lists for checkers, clerks, coopers, marine carpenters, and maintenance men, shall be selected in the following order from:

(a) employees listed on any regular employee list at such pier or terminal; where such employees have equal status, selection shall be made on the basis of seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;

(b) employees listed on regular gang lists at such pier or terminal on the basis of seniority at the pier or terminal;

(c) employees listed on regular-extra gang lists at such pier or terminal on the basis of seniority at the pier or terminal;

(d) longshoremen identified with the section in which the employer's pier or terminal is located on the basis of seniority in the industry;

(e) longshoremen identified with the borough or area in which the employer's pier or terminal is located on the basis of seniority in the industry;

(f) longshoremen whose seniority classification is identified with any other section in the port on the basis of seniority in the industry; and thereafter,

(g) the employer may select any other longshoreman without regard to any seniority classification.

Additions and replacements for coopers, marine carpenters, and maintenance men shall be selected in accordance with the rights of such employees under applicable seniority agreements.

§7.35**§7.37****Section 7.35 Replacements and additions to checker and clerk list.**

Replacements and additions to the checker and clerk list, except for timekeepers, who may be selected without regard to seniority, shall be selected in the following order from:

- (a) employees listed on the same regular checker and clerk employee list; and, thereafter,
- (b) the employer may select any checker or clerk on the basis of seniority classification in the industry.

Section 7.36 Replacements in gangs and the formation of new gangs.

Replacements in regular and regular-extra gangs and members of new gangs shall be selected in the following order from qualified longshoremen:

(a) employees listed on any regular gang list at the pier or terminal in accordance with their seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;

(b) employees listed on any regular-extra gang list at the pier or terminal in accordance with their seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;

(c) employees listed on any regular employee list at such pier or terminal; where such employees have equal status, selection shall be made in accordance with their seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;

(d) longshoremen identified with the section in which the employer's pier or terminal is located on the basis of their seniority status in the industry;

(e) longshoremen identified with the borough or area in which the employer's pier or terminal is located on the basis of seniority in the industry;

(f) longshoremen whose seniority classification is identified with any other section in the port on the basis of their seniority status in the industry; and, thereafter,

(g) the employer may select any other longshoremen without regard to any seniority classification. Temporary replacements in gangs shall be selected in the same order of priority without regard to seniority at the pier or terminal.

Section 7.37 Replacements in voluntary gangs.

Replacements in voluntary gangs shall be selected from:

(a) longshoremen identified with the section or sections within the employment information center where the gang is listed, on the basis of seniority in the industry;

(b) longshoremen identified with the borough or area in which the employer's pier or terminal is located on the basis of seniority in the industry;

(c) longshoremen whose seniority classification is identified with any other section in the port on the basis of seniority in the industry; and, thereafter,

(d) any other longshoremen without regard to any seniority classification.

Section 7.38 Ordering employees through the THEIC.

Persons who have made themselves available through the THEIC shall be ordered for employment in accordance with the provisions of this Part for the additions of employees to lists for that category of employment and the hiring sequence established, and amended from time to time, by the New York Shipping Association, Inc., and the International Longshoremen's Association, or by a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association.

Section 7.39 Ordering by special agreement.

Where on any pier or terminal or in any area or section there exists a special agreement concerning the preferential order of hiring of gangs or of employees as individuals, such agreement shall be submitted in writing to the commission by the joint board established by the New York Shipping Association, Inc. and the International Longshoremen's Association. If the commission determines that such agreement is not inconsistent with the laws of the United States, the laws of the States of New York and New Jersey and the objectives of the Waterfront Commission Act, such preferential order of hiring may be instituted.

Section 7.40 Sections.

For the purpose of priorities for longshoremen other than checkers, coopers, maintenance men and marine carpenters, the port shall consist of the following sections:

Section 1 Brooklyn, Sugar Houses in Yonkers and Long Island City

Section 7 Piers 97 to 64 North River-Manhattan, NY

Section 9 Piers 62 to 54 North River-Manhattan, NY

Section 10 Piers 51 to 25 North River-Manhattan, NY

Section 11 Pier 15 North River, around the horn to Pier 68 East River- Manhattan, NY

Section 12 Port Newark, Port Elizabeth, Perth Amboy to Leonardo, NJ

Section 14 Jersey City and Bayonne, NJ

Section 15 Hoboken, Weehawken and Edgewater, NJ

Section 16 Staten Island, NY

Maintaining and Availability of Records: Monitoring**Section 7.41 Availability of documents, tapes, disks and other data; data base to reflect commission eligibility status.**

(a) The records, transaction logs, documents, tapes, disks, and other data compiled, collected or maintained by the New York Shipping Association, Inc., the International Longshoremen's Association or by a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association pertaining to the THS shall be available for inspection, investigation and duplication by the commission, and shall be furnished to the commission, as required. Said information shall include, but not be limited to: absentee reports, audit and presentee reports, availability for hiring and hiring data and transaction logs. Said data shall be maintained for a period of at least three years.

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(b) Any data base list of gangs and registrants or individual registrants kept and maintained by the management organization representing employers of longshoremen and checkers in the Port of New York District, or by the labor organization representing longshoremen and checkers in the Port of New York District, or by a joint board of the management and labor organization, must reflect a registrant's waterfront commission eligibility status, unless otherwise authorized in writing, said status shall only be entered into the data base by commission employees at a data base terminal designated by the commission.

§7.45**Section 7.42 Recording of telephone calls; monitoring by commission.**

All telephone calls to and from the THEIC in connection with all phases of the telephone hiring system operation shall be recorded and all said recordings made by the New York Shipping Association, Inc., the International Longshoremen's Association or by a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association, shall be retained for a period of six months under the sole custody and control of the commission. The commission may review and abstract said recordings in any manner. The commission may also monitor, in any manner, any and all incoming or outgoing telephone calls concerning the telephone hiring system operation.

Prohibited Conduct**Section 7.43 Unauthorized hiring and solicitation of employment.**

(a) No person shall, directly or indirectly, hire any person for work as a longshoreman or checker within the Port of New York District, except through employment information centers established by the commission. No person shall accept any employment as a longshoreman or checker within the Port of New York District, except through such employment information centers.

(b) No person shall report for or solicit employment at any pier or terminal without having previously been selected and validated for employment through an employment information center. No gang foreman or any other person shall instruct or advise any person to report for or solicit employment at any pier or terminal prior to that person's selection and validation through an employment information center.

Section 7.44 Unauthorized participation in hiring.

Except as specifically provided in section 7.20(b) of this Part, no person shall participate or attempt to participate in any way, directly or indirectly, in the identification, selection or designation of a person for any list or roster established by the commission pursuant to these regulations or for employment as a longshoreman or checker, or of a gang for employment, except a licensed hiring agent, his superior or a person for whom permission is granted by the commission upon application of his employer and for whom appropriate identification has been issued.

Section 7.45 Unauthorized conduct in employment information centers.

(a) No persons except licensed and registered persons shall have access to the employment information centers without approval from the commission. It shall be the policy of the commission to grant to representatives of management and the union permission to observe the hiring.

(b) No person shall in or upon any area, stairway or other appurtenance of an employment information center, sell or offer for sale any article of merchandise; conduct or solicit any business or trade; solicit alms, funds or contributions for any purpose; or post, distribute or display signs, advertisements, circulars, printed or written matter.

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(c) No person shall gamble, conduct or engage in any game of chance in or upon any area, stairway or any other appurtenance of an employment information center.

(d) No person shall deface, mark, break or otherwise damage any part of a center or any property therein, or create a disturbance in or about a center or do any act or thing which shall create a nuisance in or about a center.

(e) No person who is unable to give a satisfactory explanation of his presence shall loiter in or about any lavatory area, stairway or other appurtenance of an employment information center.

(f) Except in any area designated by the commission as a smoking area, no person shall smoke or carry a lighted cigarette, cigar or pipe in or upon any area, stairway or any other appurtenance of an employment information center.

(g) Any permission granted by the commission, directly or indirectly, expressly or by implication, to any person or persons to enter upon or use an employment information center or any part thereof is conditioned upon acceptance of and compliance with the provisions of this section.

Section 7.46 Tampering with THS.

(a) No person shall directly or indirectly tamper with or utilize any telephone, computer, monitor, record, transaction log, document, tape, disk, report, data or equipment pertaining to the THS with intent to deceive or defraud the commission, the New York Shipping Association, Inc., the International Longshoremen's Association, a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association or any other person.

(b) No person shall intentionally tamper with, alter in any manner, or destroy any computer equipment, computer program, computer data or computer material utilized in connection with the THS.

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**Part 8 - Regularization of Employment of Longshoremen and Checkers
(Decasualization)**

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L. 1953,
ch. 202; Unconsolidated Laws, § 9810[7]

Section

8.1 Removal from register for failure to work or be available for work

8.2 Audit of availability for work

8.3 Notice before final removal

8.4 Requirements for reinstatement after removal from register

Section 8.1 Removal from register for failure to work or be available for work.

(a) To qualify for retention in the commission's "deep-sea" register, a person included in such register must work as a longshoremen or as a checker, or make himself available for work in accordance with the provisions of subdivision (b) of this section, a minimum of 90 days in each half-calendar year, distributed at least 15 days to each month during at least five of the six months in each half-calendar year. In administering this section, receipt of compensation by any such person pursuant to the guaranteed wage provisions of any collective bargaining agreement relating to longshoremen and/or checkers shall be counted as constituting actual work, provided that such is received as a result of compliance with the provisions of subdivision (b) of this section.

(b) A registrant may make himself available for work by telephoning the THEIC between the hours of 4 p.m. and 8 p.m. on the prior day for orders. Those registrants who do not receive orders for the next day shall be available between the hours of 8 a.m. and 9 a.m. on the next day (except Saturday, Sunday or holidays) for telephone orders.

(c) To qualify for retention in the commission's "A" register, a person included in such register must appear on the current roster of an employer of such persons. Any such employer shall submit to the commission, at least once a year at a time designated by the commission, a roster of persons it employs or intends to employ.

Section 8.2 Audit of availability for work.

(a) The commission may conduct audits, daily or otherwise, to insure that registrants are or have been available for work within the meaning of section 8.1(b) of this Part. The results of any such audit may be entered in the THS data base.

(b) The association representing employers of longshoremen and checkers and the labor organization representing longshoremen and checkers in the Port of New York District, or a joint board of such association and labor organization, shall furnish the commission with any and all information necessary for the commission to properly perform the audits referred to in subdivision (a) of this section.

(c) Any audit performed by telecommunications system controllers shall be recorded in writing and furnished to the commission. The results of any such audit shall be entered into the THS data base. The audit sheet shall specify the registration number of the particular registrant contacted, whether the registrant was available or unavailable for work and any appropriate comments, and shall be signed by the person conducting the audit.

§8.3**§8.4****Section 8.3 Notice before final removal.**

(a) No person shall be removed from the "deep-sea" register pursuant to article IX and section 5-c of the Act and this Part except upon two weeks' notice of his failure to accrue the minimum number of days required by this Part.

(b) No person shall be removed from the "A" register except upon two weeks' notice of his failure to appear on any current roster of registrants submitted pursuant to section 8.1(c) of this Part.

Section 8.4 Requirements for reinstatement after removal from register.

(a) Any person removed from the "deep-sea" longshoremen's register pursuant to article IX and section 5-c of the act and this Part may seek registration upon fulfilling the same requirements as for initial inclusion in such register, provided applications for registration are then being accepted by the commission pursuant to section 5-p of the act and provided further that at least one year has expired from the date of removal, except that immediate reinstatement shall be made upon a proper showing that the registrant's failure to work or apply for work the minimum number of days required by this Part was caused by the fact that the registrant was engaged in the military service of the United States or was incapacitated by ill health, physical injury, or other good cause. The registration of any person who, because of incapacitation by ill health or physical injury, failed to work or to apply for work the minimum number of days required by this Part shall be administratively withdrawn during the pendency of such incapacitation. Upon request, immediate reinstatement shall be made upon a proper showing that (i) the registrant is no longer incapacitated and (ii) such request for reinstatement is no more than one year after registrant's period of incapacitation. In the event such failure to work or apply for work the minimum number of days required by this Part was caused by the fact that the registrant was incarcerated, such registrant may be reinstated provided he applies for such reinstatement within one year after the termination of such incarceration. Any reinstatement under this section shall not preclude a proceeding to revoke, cancel or suspend the registration of any such person reinstated to the register nor the temporary suspension of such registration under the provisions of article XI of the act.

(b) No petition for reinstatement shall be accepted from any person seeking reinstatement unless the person is sponsored for employment by a "stevedore" or by any "person", within the meaning of those terms contained in the act, who is an employer of individuals requiring a registration or a license under the act and where proof of sponsorship has been received by the commission, prior to submission to the commission of said petition, in the form of a letter submitted by the sponsoring employer.

(c) Any person removed from the "A" register may seek registration upon fulfilling the same requirements as for initial inclusion in such register except that where reinstatement is sought within one year of removal from the said "A" register, the commission may, in its discretion, waive said requirements.

Part 9 - Assessments

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L. 1953, ch. 202; Unconsolidated Laws, § 9810[7]

Section**9.1 Gross payroll payments****9.2 Filing of assessment returns and payment of assessments****9.3 Computing gross payroll payments paid to certain licensees****9.4 Extension for filing return or paying assessment****9.5 Failure to file return and filing incorrect return****9.6 Notice of deficiency; petition for hearing****Section 9.1 Gross payroll payments.**

As used in this Part, the term gross payroll payments shall include all amounts paid or credited to longshoremen, checkers, pier superintendents, hiring agents or port watchmen, whether as wages, hourly rate, traveling expense (other than amounts paid to cover actual transportation costs), vacation and holiday payments or guaranteed annual income (GAI) payments.

Section 9.2 Filing of assessment returns and payment of assessments.

Every employer of persons working as registrants or licensees shall, on or before the 15th day of January, April, July and October immediately following any calendar quarter during which such employer has made any gross payroll payments to such registrants or licensees, file with the commission at its main administrative offices an assessment return on a form which may be obtained from the commission and pay the assessment then due, based upon the rate as fixed by the commission.

Section 9.3 Computing gross payroll payments paid to certain licensees.

For the purpose of computing gross payroll payments, salaries and other compensation of corporate officers and other persons of equivalent managerial authority who hold licenses as pier superintendents or hiring agents and who perform such licensed functions only in emergency or other unusual conditions may, upon submission of adequate evidence, be included only to the extent that such compensation does not exceed \$10,000 per annum.

Section 9.4 Extension for filing return or paying assessment.

The commission, upon a showing of good cause, may grant a reasonable extension of time for filing an assessment return or for the payment of any assessment. Any application for such extension must be made prior to the due date. As a condition of granting an extension of time for filing a return, the commission may require the submission of a tentative return and the payment of the assessment based on such tentative return.

Section 9.5 Failure to file return and filing incorrect return.

If in the opinion of the commission the return of any employer is incorrect, the commission may revise such return and may audit and state an account according to such revised return for the amount due from such employer for the assessment, penalties and interest. If an employer fails to make a return, the commission may estimate his gross payroll payments from any information available to it. For this purpose, the commission may examine the employer's books and records, take testimony, require other evidence, and audit and state an account according to such information of the amount due from the employer for the assessment, penalties and interest. Nothing in this section is intended to or shall be construed to limit the investigating or auditing powers of the commission under the Act.

Section 9.6 Notice of deficiency; petition for hearing.

(a) Whenever a deficiency in payment of the assessment is determined, the commission shall give notice thereof to the employer. Such determination shall finally and conclusively fix the amount due, unless the employer shall, within 30 days after the giving of notice of such determination, petition in writing to the commission for a hearing, or unless the commission on its own motion shall reduce the same. A petition for such hearing shall be verified and contain the following information:

(1) the name and address of the employer, license number, if any, the period covered by the deficiency and the date of the deficiency notice; and

(2) the grounds upon which the petition is based and each error of fact alleged to have been made by the commission in its determination, together with the facts and arguments in support thereof.

(b) The commission, or its designated hearing officer, shall fix the time and place of the hearing on any petition upon at least five days' notice. The conduct of the hearing shall be governed, insofar as applicable, by the provisions of Part 6 of this Title.

Part 10 - Public Loading

Statutory authority: New York L. 1953, ch. 882, § 7, art. IV; New Jersey L. 1953, ch. 202; Unconsolidated Laws, § 9810[7]

Section**10.1 Persons permitted to load or unload waterborne freight for compensation****10.2 Persons not included as employees****10.3 Coercive tactics to require loading and unloading services prohibited****Section 10.1 Persons permitted to load or unload waterborne freight for compensation.**

(a) No person shall solicit, collect, receive or contract for any fee or other compensation for the loading or unloading of waterborne freight onto or from vehicles other than railroad cars at piers or at other waterfront terminals within the Port of New York District unless:

(1) such person, or his employee, shall actually perform the loading or unloading services; and

(2) such person is:

(i) a carrier of freight by water, but only at piers at which its vessels are berthed; or

(ii) any other carrier of freight (including, but not limited to, railroads and truckers), but only in connection with freight transported or to be transported by such carrier; or

(iii) an operator of a pier or other waterfront terminal (including railroads, truck terminal operators, warehouseman and other persons), but only at a pier or other waterfront terminal operated by it; or

(iv) a shipper or consignee of freight, but only in connection with freight shipped by such shipper or consigned to such consignee; or

(v) a stevedore licensed under article VI of the Act, whether or not such waterborne freight has been or is to be transported by a carrier of freight by water with which such stevedore shall have a contract of the type prescribed by subdivision (d) of section 3 of article VI of the Act.

(b) Nothing herein contained shall be deemed to permit any such loading or unloading of any waterborne freight at any place by any such person by means of any independent contractor, or any other agent other than an employee, unless such independent contractor is a person permitted by this Part to load or unload such freight at such place in his own right.

Section 10.2 Persons not included as employees.

As used in this Part, the term employee shall not include a person who:

(a) offers himself for employment solely to perform such labor, or is employed for the sole purpose of performing such labor; or

(b) is selected or hired for employment for such labor at or in the vicinity of piers or other waterfront terminals; or

(c) is paid other than a weekly, daily or hourly wage, with appropriate deductions for Federal withholding and social security taxes for such labor; or

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(d) shares in fees collected by his employer for such loading or unloading services; or

(e) is not recorded on the payrolls of the employer for whom he performs such labor in the same manner as other employees; or

(f) is not subject to the direct and immediate supervision of his employer in the performance of such labor; or

(g) uses or leases to his employer to perform such loading or unloading services, equipment (such as escalators, hi-los, fork trucks, cranes, etc.) owned by him, directly or indirectly, in whole or in part.

Section 10.3 Coercive tactics to require loading and unloading services prohibited.

No person shall, directly or indirectly, by the use of force, threats, intimidation or other coercive tactics require or attempt to require the utilization of his or any other person's services to perform the loading or unloading services specified in section 10.1 of this Part.