

CHAPTER 132
COURT ACTIONS AND PROCEDURES

SUBCHAPTER 1. GENERAL PROVISIONS

10:132-1.1 Scope; applicability and purpose

This [rule] **chapter** implements N.J.S.A. 30:4C-4.1 and 4.2 and provides the consent and approval of the Commissioner of the Department of Children and Families authorizing the Division of [Youth and Family Services] **Child Protection and Permanency** to commence or maintain actions in court.

10:132-1.2 Court actions by the Division

The Commissioner of the Department of Children and Families consents to the commencement and maintenance of all actions which the Division of [Youth and Family Services] **Child Protection and Permanency** is authorized by law to commence or maintain, including, but not limited to, all actions brought pursuant to N.J.S.A. 30:4C-1 et seq. and 9:6-1 et seq.

TRANSPORTATION

(a)**NEW JERSEY MARITIME PILOT AND DOCKING PILOT COMMISSION****Rules of the New Jersey Maritime Pilot and Docking Pilot Commission****Proposed Amendments: N.J.A.C. 16:64-1.3 through 1.7, 2, 3.1, 3.3, 3.4, 3.9, 3.10, 3.11, and 4****Proposed Recodifications with Amendments: N.J.A.C. 16:64-1.8, 3.2, 3.5, 3.6, 3.7, 3.8, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 6, 7, 8.1, and 9 as 1.4, 2.7, 7.4, 3.3, 7.5, 7.2, 8.1, 8.2, 8.3, 7.6, 7.3, 8.4, 7.7, 10, 9, 6.1, and 5, respectively****Proposed New Rules: N.J.A.C. 16:64-6.2, 7.1, and 9.10****Proposed Repeals: N.J.A.C. 16:64-7.10, 8.2 through 8.11, 9.7, and 9.8**

Authorized By: New Jersey Maritime Pilot and Docking Pilot Commission, Hon. Charles E. Stapleton, President.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-032.

Submit written comments by May 16, 2014, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 12:8-1 et seq., the New Jersey Maritime Pilot and Docking Pilot Commission (Commission) proposes amendments, repeals, new rules, and recodifications to N.J.A.C. 16:64. Because the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The focus of this rulemaking is not to make substantive changes, although some of the substance has been changed. Instead, the rulemaking is intended to correct regulatory citations, clarify

applicability, consolidate language to eliminate duplication and inconsistencies, and reorganize provisions so that related provisions are grouped together. New Subchapter 7, General License Requirements, is proposed to consolidate rules applicable to both maritime pilots and docking pilots. Other portions of the existing rules that are applicable to both pilot groups have been split into more than one section. Finally, the rulemaking incorporates current Commission directives and policies.

Throughout the chapter, minor grammatical and technical amendments, and updates to codification (based on recodifications proposed in this rulemaking and prior recodifications) are proposed.

Subchapter 1. General Provisions

At N.J.A.C. 16:64-1.3, the definition of “apprentice” is amended to make it consistent with the language in N.J.S.A. 12:8-1.2, by adding the ability to be a qualified apprentice pursuant to N.J.S.A. 12:8-11, 12, and 50, in addition to N.J.S.A. 12:8-10, which clarifies applicability to both maritime pilot apprentices and docking pilot apprentices. The definition of “Commissioners” is amended to update the name of the group. The definitions of “deputy pilot,” “full branch pilot,” and “limited branch pilot” are amended to clarify that these definitions apply only to maritime pilots. The definition of “occurrence” is amended to include groundings, deaths, and “discharge of a substance” as used in this definition is clarified to mean “discharge of oil and hazardous substances.” The definition of “pilot” is amended to clarify the applicability of the definition to both maritime pilots and docking pilots.

Recodified N.J.A.C. 16:64-1.5(e) is amended to remove the rules of evidence as something the Secretary will consider in reviewing requests for information.

Recodified N.J.A.C. 16:64-1.6 is amended by changing references to “licensed pilots” to “maritime pilots” in the section heading and subsection (a) and by adding the word “maritime” before “pilots” in subsection (b) to clarify that this section applies to maritime pilots.

Recodified N.J.A.C. 16:64-1.7 is amended to add the word “maritime” to the section heading to clarify that this section applies only to maritime pilots. The tables at recodified paragraph (b)3 are replaced to remove errant bolding of text to conform to the New Jersey Administrative Code standards.

Recodified N.J.A.C. 16:64-1.8 is amended to add the word “maritime” to the section heading and in the section body prior to the word “pilot” to clarify that this section applies to maritime pilots.

Existing N.J.A.C. 16:64-1.8 is proposed for recodification as N.J.A.C. 16:64-1.4 to group the section with other related introductory sections. Subsection (a) is deleted as it is redundant of subsection (b) and language is added to recodified subsection (a) to indicate the incorporated documents are “as amended and supplemented.” Further, paragraph (b)5 is deleted as it refers to a definition in N.J.A.C. 7:64-1.3, which was the codification of this chapter prior to September 17, 2004. The definition referred to in this paragraph is listed in N.J.A.C. 16:64-1.3, the definitions section of this chapter, which applies to this entire chapter; therefore, this paragraph is outdated and unnecessary.

Subchapter 2. Maritime Pilot Apprenticeship

Throughout the subchapter amendments clarify that this subchapter applies only to maritime pilot apprentices, rather than Sandy Hook pilot apprentices.

A new sentence is added to N.J.A.C. 16:64-2.3(d) to indicate that upon the Commission selecting an applicant from the approved list, the applicant is deemed a registered apprentice.

New N.J.A.C. 16:64-2.4(f) is added to include a requirement for maritime apprentices to undergo an annual medical examination.

The heading of N.J.A.C. 16:64-2.6 is amended to read “Certification of maritime pilot apprentices,” rather than “Examination of apprentices,” to better reflect the section’s applicability. Subsection (b) is deleted as the substance of the subsection is relocated to recodified N.J.A.C. 16:64-2.7(d).

Subchapter 3. Maritime Pilot Licensing

N.J.A.C. 16:64-3.1 is amended to clarify that the section applies only to maritime pilots. N.J.A.C. 16:64-3.1(b) is amended to clarify that the subsection applies to maritime pilots seeking to extend or add a route or

to obtain grade advancement, in addition to those seeking to be licensed as a maritime pilot.

Existing N.J.A.C. 16:64-3.2 is recodified as N.J.A.C. 16:64-2.7 to group that section with related requirements for maritime pilot apprentices. New N.J.A.C. 16:64-2.7(d) is added to state when and why the Commission's will conduct examinations for initial licensure as a deputy pilot.

N.J.A.C. 16:64-3.4(a) is amended to clarify that the applicant is the deputy pilot. Subsection (b) is amended to reorganize and clarify the information a maritime pilot must submit to extend or add a route(s). Further, the word "maritime" is added to clarify that this subsection applies only to maritime pilots.

Existing N.J.A.C. 16:64-3.5 is recodified as N.J.A.C. 16:64-7.4, which is applicable to both maritime pilots and docking pilots. Recodified N.J.A.C. 16:64-7.4(a)4 is amended to include a cross-reference to N.J.A.C. 16:64-5.3(b)10. Subsections (b) and (c) are amended to not mandate submission of medical examination results to the Association. Existing paragraph (d)1 has been deleted as it is relocated to the recodified apprentice rules.

Existing N.J.A.C. 16:64-3.6 is recodified as N.J.A.C. 16:64-3.3. The statutory citation requiring the oath of office to the applicant is replaced with a reference to the "oath of maritime pilots."

Existing N.J.A.C. 16:64-3.7 is recodified as N.J.A.C. 16:64-7.5 and is amended to be applicable to both maritime pilots and docking pilots; thereby placing a new requirement on docking pilots over 65 years of age to undergo two physical examinations each year.

Existing N.J.A.C. 16:64-3.8 is recodified as N.J.A.C. 16:64-7.2 and is amended to be applicable to both maritime pilots and docking pilots. Paragraph (a)4 is amended to not mandate submission of medical examination results to the Association. Subsection (b) is revised to change attainment of deputy pilot status" to "licensure" to apply to all forms of licensure, not merely deputy pilot status.

Recodified N.J.A.C. 16:64-3.5 is proposed for amendment to add the word "maritime" to clarify that this section applies only to maritime pilots. At subsection (b), the cross-references are deleted as the pilot does not submit an application (N.J.A.C. 16:64-3.11) and N.J.A.C. 16:64-3.12 was repealed effective December 7, 2009. Vessel draft and registered gross tonnage criteria for various pilot grades is amended in subsection (e) to ensure that deputy pilots have the requisite experience and qualifications to pilot Post Panamax ships calling at the Port of New York and New Jersey. Paragraph (e)4, Grade 5B, is proposed for deletion as Grade 5B is no longer used, to speed up the advancement process for deputy pilots.

Recodified N.J.A.C. 16:64-3.7 is amended to refer to maritime pilots throughout. Subsections (a) and (b) are amended to delete "for which approval is required by the Commission," as all increases require Commission approval.

Subchapter 4. Pilot Boats and Stations

The word "maritime" is added throughout the subchapter to clarify that this subchapter applies to maritime pilot boats and stations.

Subchapter 7. General License Requirements

New N.J.A.C. 16:64-7, General License Requirements, is added to assemble existing requirements that are applicable to both maritime pilots and docking pilots into one subchapter.

New N.J.A.C. 16:64-7.1, Scope, is added and to indicate that this subchapter is applicable to maritime pilots and docking pilots.

N.J.A.C. 16:64-7.2 is recodified from N.J.A.C. 16:64-3.8 and amended as discussed above.

N.J.A.C. 16:64-7.3 is recodified from N.J.A.C. 16:64-5.5, as discussed below.

N.J.A.C. 16:64-7.4 is recodified from N.J.A.C. 16:64-3.5, as discussed above.

N.J.A.C. 16:64-7.5 is recodified from N.J.A.C. 16:64-3.7, as discussed above.

N.J.A.C. 16:64-7.6 is recodified from N.J.A.C. 16:64-5.4, as discussed below.

N.J.A.C. 16:64-7.7 is recodified from N.J.A.C. 16:64-5.7, as discussed below.

Subchapter 5. Duties of Pilotage

N.J.A.C. 16:64-5.1 is recodified as N.J.A.C. 16:64-8.1 and is amended to explicitly clarify applicability of this subchapter to maritime pilots, docking pilots, and apprentices.

N.J.A.C. 16:64-5.2 is recodified as N.J.A.C. 16:64-8.2. Subsections (b) and (e) are amended to indicate which pilots the subsection is referring to.

N.J.A.C. 16:64-5.3 is recodified as N.J.A.C. 16:64-8.3. Subsections (d) and (e) are revised to include docking and undocking, not just passage of vessels.

N.J.A.C. 16:64-5.4 is recodified as N.J.A.C. 16:64-7.6. A minor grammatical amendment is proposed for clarity. A regulatory citation is amended to reflect recodification of N.J.A.C. 16:64-5.5(c).

Existing N.J.A.C. 16:64-5.5 is recodified as N.J.A.C. 16:64-7.3. Subsection (b) is amended to correct an error, as the continuous absentia period that requires Commission notification is 30 days, not 90 days. New subsection (d) is added to now apply to docking pilots, as well as maritime pilots (as was always required).

N.J.A.C. 16:64-5.6 is recodified as N.J.A.C. 16:64-8.4. Subsection (a) is amended to delete what is included in an occurrence, as the same information is already included in the definition of "occurrence." Paragraph (a)1 is revised to indicate the report to be made to the Commission is a verbal report. Paragraph (a)2 is amended to contain the criteria pertaining to photostatic copies, which is relocated from existing N.J.A.C. 16:64-5.6(d) and is amended to include "voyage plans," "pilot cards," "bell books," and the "log book" requirement at existing N.J.A.C. 16:64-5.6(d)2 is revised from "log books (rough and smooth)" to "deck and engine log books." New paragraph (a)3 is proposed to clarify the existing requirement for pilots and apprentices involved in an occurrence to undergo a chemical drug and alcohol test. Existing subsection (b) is relocated as subsection (e). New subsection (b) is proposed to state that any additional documents within the pilot's possession and/or control be submitted to the Commission, when requested. Recodified subsection (d) is amended to permit the indicated documents to be provided to the Commission, rather than stating the negative of "shall not be required to provide"; however, such provision of documents is not mandatory. Subsection (f) is amended to indicate fines shall continue to be doubled for each subsequent offense, rather than "doubled in the event of a second offense."

N.J.A.C. 16:64-5.7 is recodified as N.J.A.C. 16:64-7.7. Subsection (a) is amended to clarify the submission requirements for a recurrent training program, as the existing language is obsolete with current industry practice. Subsection (d) is deleted as the pilot is not responsible for implementing the plan.

Subchapter 6. Penalties, Orders, and Hearings

Subchapter 6 is recodified as Subchapter 10.

Recodified N.J.A.C. 16:64-10.1 is amended to add the words "maritime pilot," "docking pilot," and "apprentice" to clarify that the section applies those groups.

Recodified N.J.A.C. 16:64-10.2(c) is amended to include "Except as set forth in N.J.A.C. 16:64-8.4(c) and 9.15" for clarity. Subsection (d) is amended to include additional training as a penalty for a violation of this chapter.

Recodified N.J.A.C. 16:64-10.4(b) is amended to cap the prohibition on pilots to up to 30 days. Grammatical amendments are proposed for clarity. Regulatory citations are amended to reflect recodification of N.J.A.C. 16:64-6.5, 6.6, 7.3 and 7.15.

Recodified N.J.A.C. 16:64-10.5(a) and (b) are amended to also apply to apprentices. Grammatical amendments are proposed for clarity of applicability. A regulatory citation is amended to reflect recodification of N.J.A.C. 16:64-6.3.

At recodified N.J.A.C. 16:64-10.6, it is proposed that "adjudicatory hearing" be renamed "formal hearing."

Subchapter 7. Drug Free Workshop and Program

N.J.A.C. 16:64-7 is recodified as N.J.A.C. 16:64-9 and the subchapter heading is revised to include "Workplace Drug and Alcohol Testing Programs."

Recodified N.J.A.C. 16:64-9.1 is amended to clarify the applicability of this subchapter to “maritime pilots,” “docking pilots,” and “apprentices.”

At recodified N.J.A.C. 16:64-9.2, the definition of “intoxicant” is deleted because the Federal definition of this term has been deleted from applicable Federal regulations. The definition “Fails a chemical test for drugs” is amended to change “drugs” to “dangerous drugs” as that is how the term is used in Federal regulations and to clarify what a “positive” test is. The definition of “Medical Review Officer” is amended to state that the person need not be designated by the Association and sets the requirements for that person.

Recodified N.J.A.C. 16:64-9.4(b) is amended to clarify the requirement for a pilot to provide the Commission with a statement from his or her treating physician that the use of prescribed dangerous drugs will not interfere with the safe performance of the pilot’s duties and removed the requirements for certain specified certifications.

Existing N.J.A.C. 16:64-7.9 is recodified as N.J.A.C. 16:64-9.9. New N.J.A.C. 16:64-9.9(a) is proposed to state when a pilot or apprentice is considered to be involved in an occurrence. Recodified subsection (b) is amended to state who shall undergo post-occurrence drug testing and also specifies the types of occurrences that require post-occurrence drug test. Recodified N.J.A.C. 16:64-9.9(c) is amended to denote the time frame in which drug and alcohol tests must be conducted. New subsection (d) is added to require that a copy of the chemical drug test results be submitted to the Commission no later than 24 hours from the time of receipt of the test results.

N.J.A.C. 16:64-7.10 is proposed for repeal and replaced with similar content as new N.J.A.C. 16:64-9.10, while removing some extraneously detailed language.

Recodified N.J.A.C. 16:64-9.11(e) is amended to change “that meets the definition of a positive alcohol test” with “at or above 0.04 percent” as the first clause is not a defined term in the chapter and stating the specific language is more clear.

Recodified N.J.A.C. 16:64-9.15 is amended to use the terms “formal” and “informal” hearing, rather than “adjudicatory and “show cause” hearing, respectively. Minor grammatical amendments are proposed for clarity and make clear applicability. Regulatory citations are amended to reflect recodification of N.J.A.C. 16:64-6.4(b)(c), 6.6 and 7.3(a)2 or (a)3.

Subchapter 8. Docking Pilots

N.J.A.C. 16:64-8.1 is recodified as N.J.A.C. 16:64-6.1 and subsection (d) is deleted and relocated as new N.J.A.C. 16:64-6.2.

N.J.A.C. 16:64-8.2 through 8.11 are proposed for repeal as the language in these sections is covered in other areas of the chapter, as proposed for amendment.

Subchapter 9. Docking Pilot Apprenticeship Program

N.J.A.C. 16:64-9 is recodified as N.J.A.C. 16:64-5.

Recodified N.J.A.C. 16:64-5.2 is amended to reflect a change in the length of time an approved docking pilot application remains valid. The approved list of applicants would expire two years from the date the list is approved by the Commission.

Existing N.J.A.C. 16:64-9.3(c)2 is deleted and replaced with new N.J.A.C. 16:64-5.3(b)12 and 13 are proposed to make the rules consistent with the requirements listed in N.J.S.A. 12:8-50. New paragraph (b)13 is added to require docking pilot apprentices to hold a current unlimited radar observer’s certificate.

New N.J.A.C. 16:64-5.4(c)5 is added to include the existing requirement for docking pilot apprentices to undergo an annual medical examination in this section. New N.J.A.C. 16:64-5.4(c)7 is added to clarify the existing requirement (relocated from N.J.A.C. 16:64-8.5) for the Independent Pilot Association to report to the Commission the absence of a docking pilot apprentice from duty for more than 30 consecutive days.

New N.J.A.C. 16:64-5.7(b), (c), and (d) are added to describe the administrative procedures for dismissing or suspending a docking pilot apprentice. These administrative procedures already exist for maritime pilot apprentices.

Existing N.J.A.C. 16:64-9.7 and 9.8 are proposed for repeal as the effectiveness of these section expired in 2006.

Social Impact

The proposed amendments, new rules, repeals, and recodifications would enhance the Commission’s governance of maritime pilots and docking pilots, ensuring that State-licensed pilots have the necessary skills, knowledge, and abilities to perform their duties safely and efficiently. Properly trained State-licensed pilots will reduce the risk of maritime accidents and environmental disasters and promote economic opportunity within the Port of New York and New Jersey and the State of New Jersey.

Economic Impact

The proposed amendments, new rules, repeals, and recodifications will have a minor economic impact. The changes would impose a new requirement for docking pilots over 65 years of age to complete two medical examinations per year. Existing rules already require maritime pilots over 65 years of age to undergo two medical examinations per year. It is estimated that the cost of this requirement would average about \$250.00 per year. The changes would also require persons listed on the expired docking pilot apprentice list to reapply. The cost of this is \$500.00.

Federal Standards Statement

New Jersey Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1955, c. 65), require that all State rules include a statement as to whether the proposed rules contain any standards or requirements that exceed the standards or requirements imposed by Federal law.

While the regulation of pilots working in navigable waters of the United States is clearly a regulation of commerce within the powers of Congress, there is a concurrent system of state pilotage regulation. States have jurisdiction over foreign vessels and vessels sailing under register. Federally licensed pilots are in general, required to be used on coastwise (domestic trade) vessels that are “enrolled,” but not sailing under register, 46 U.S.C. § 8502. States may regulate pilotage on foreign vessels and U.S. vessels operating on register in the bays, rivers, harbors and ports of the United States (46 U.S.C. § 8501). Thus, New Jersey pilotage laws and rules are controlling in situations regulated by this chapter.

Accordingly, the proposed amendments, new rules, repeals, and recodifications do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law and no further analysis is required.

Jobs Impact

The Commission does not anticipate that any jobs will be generated or lost as a result of the proposed amendments, new rules, repeals, and recodifications.

Agriculture Industry Impact

The proposed amendments, new rules, repeals, and recodifications have no impact on the agriculture industry. The changes are not intended to regulate farming, crop, or animal production.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required since the proposed amendments, new rules, repeals, and recodifications would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Only individual persons, not businesses, may be licensed as maritime and docking pilots. However, in the event individual pilots may be deemed “small businesses” within the meaning of the Act, the following analysis would be applicable. The proposed amendments, new rules, repeals, and recodifications will impose new compliance requirements on docking pilots concerning medical examinations and ARPA certification, as described in the Summary above. The economic impact of the requirements is discussed in the Economic Impact above. No professional services will be required to comply. The Commission has determined not to provide any exemptions or lesser requirements on small businesses because the potential relief that may be afforded by such an exemption does not outweigh the Commission’s obligation to protect public health and safety.

Housing Affordability Impact Analysis

The proposed amendments, new rules, repeals, and recodifications will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the proposed amendments, new

rules, repeals, and recodifications would evoke a change in the average costs associated with housing because the proposed amendments, new rules, repeals, and recodifications pertain to the route currency of Commission licensees.

Smart Growth Development Impact Analysis

The proposed amendments, new rules, repeals, and recodifications will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed amendments, new rules, repeals, and recodifications would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments, new rules, repeals, and recodifications pertain to the route currency of Commission licensees.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 16:64-7.10, 8.2 through 8.11, 9.7, and 9.8.

Full text of the proposed amendments, new rules, and recodifications follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

Recodification Table

<u>Existing Rule</u>	<u>Proposed Recodification</u>
(N.J.A.C.)	(N.J.A.C.)
16:64-1.8	16:64-1.4
16:64-3.2	16:64-2.7
16:64-3.5	16:64-7.4
16:64-3.6	16:64-3.3
16:64-3.7	16:64-7.5
16:64-3.8	16:64-7.2
16:64-5.1	16:64-8.1
16:64-5.2	16:64-8.2
16:64-5.3	16:64-8.3
16:64-5.4	16:64-7.6
16:64-5.5	16:64-7.3
16:64-5.6	16:64-8.4
16:64-5.7	16:64-7.7
16:64-6	16:64-10
16:64-7	16:64-9
16:64-8.1	16:64-6.1
16:64-9	16:64-5

SUBCHAPTER 1. GENERAL PROVISIONS

16:64-1.3 Definitions

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

...
 "Apprentice" means a person who is [registered] **listed as a qualified apprentice** with the Commission pursuant to **section 34 of P.L. 2004. c. 72** (N.J.S.A. 12:8-[10 and this chapter] **50**) **or who is on the Commission's books as an apprentice pursuant to N.J.S.A. 12:8-10, 12:8-11, or 12:8-12.**
 ...

"Commissioners" means the Commissioners of [Pilotage] **maritime and docking pilots** appointed by the Governor pursuant to N.J.S.A. 12:8-1 et seq.

"Deputy pilot" means a **maritime** pilot of the third, fourth, fifth, and sixth grade.
 ...

"Full branch pilot" means a **maritime** pilot of the first grade.
 ...

"Limited branch pilot" means a **maritime** pilot of the second grade.
 ...

"Occurrence" means any possible collision, allision, **grounding**, stranding, touching of bottom, power loss, steering loss, damage to or loss of property, **death**, personal injury, or discharge of **oil or a hazardous** substance into the water.

"Order" means an order issued by the Commission in accordance with N.J.A.C. 16:64-[6.3]**10.3.**
 ...

"Pilot" means a maritime pilot [or] **and a** docking pilot as defined in N.J.S.A. 12:8-1.2.
 ...

16:64-[1.8]**1.4** Incorporation by reference

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

[(b)] **(a)** The following statutes, **rules**, and regulations are incorporated **into this chapter** by reference, [in this chapter] **as amended and supplemented:**

1.-2. (No change.)

3. Code of Federal Regulations, Title 49, Part 40, Procedures for Transportation Workplace Drug Testing Programs, Sections 40.23, 40.25, 40.27, 40.29, 40.31, and 40.39; **and**

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

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

16:64-[1.4]**1.5** New Jersey Maritime Pilot and Docking Pilot Commission

(a) (No change.)

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

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

(d) (No change.)

(e) The Secretary may require a person requesting information from the Commission to submit a written request and pay fees or costs when necessary. The Secretary shall review the request in accordance with the requirements of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. and any other State or Federal law pertaining to public records[, and confidentiality], and the rules of evidence].

16:64-[1.5]**1.6** Requirement to take a [licensed] **maritime** pilot

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

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

16:64-[1.6]**1.7** Fees for **maritime** pilotage

(a) (No change.)

(b) Fees for maritime pilotage are as follows:

1.-2. (No change.)

3. After conferring with the New York Pilotage Commission, it has been determined that maritime pilotage rates for intermediate or intra-harbor movement of vessels shall be as follows:

(Agency Note: The text of the tables follows without proposed change symbolization, the amendments are described in the Summary above.)

SERVICE	FEE	CODE
Un-established Transporting Fee	\$400.00	M
Vessel Returning from Sea Due to Stress of Weather	Full Pilotage	M
Detention Due to Delay for Convenience of Vessel	\$100.00 Per 1/2 Hour or Part of 1/2 Hour	W
Detention Due to Delay for Awaiting Favorable Tide or Berth**	\$100.00 Per 1/2 Hour or Part of 1/2 Hour	W
Dismissal of Pilot without Rendering Service	\$1,000.00 or Base Pilotage Tariff, whichever is less	S
Standing By on Vessel for Convenience of Vessel	\$100.00 Per 1/2 Hour with Minimum of \$500.00	M
Additional Pilot at request of vessel	One-Half of Base Pilotage Tariff	-
Docking Fees:		
* Without Assistance of Tugs or Bow Thruster	33 Percent of Base Pilotage Tariff	D3
* Without Assistance of Tugs with Bow Thruster	26 Percent of Base Pilotage Tariff	D2
* With Assistance of Tug or Bow Thruster	20 Percent of Base Pilotage Tariff	D1
Swinging Vessel for Compass or Calibration of Instruments	\$150.00 in Addition to Regular Pilotage	C
Anchoring in Vicinity of Pilot Station at Request of Vessel	\$500.00	A
Vessel on Station Requesting Pilot Less than 24 Hours Notice	20 Percent of Base Pilotage Tariff, Minimum Charge of \$500.00	M2
Cancellation Less Than Six Hours Before Scheduled Arrival Time	20 Percent of Base Pilotage Tariff, Minimum Charge of \$500.00	M1
Vessel Arriving More Than Two Hours Late without Six Hours Notice from Scheduled Arrival Time	\$100.00 Per 1/2 Hour, not to exceed 20 Percent of Base Pilotage Tariff, Minimum Charge of \$500.00	M1
Sailing Order Received Less Than Three Hours Prior To Sailing Time	\$300.00	M3

CHARGES IN DOLLARS FOR SERVICES BETWEEN ANY TWO POINTS ON THIS CHART ARE NOTED IN THE INDIVIDUAL BOXES.	Upper Bay and Gravesend Bay	Hudson River South of George Washington Bridge	Hudson River at Yonkers	East River South of Hell Gate	East River West of Hunts Point	Newark Bay and Tributaries	Kill Van Kull and Arthur Kill North of Tufts Point	Jamaica Bay	Leonardo via Chapel Hill Channel	Leonardo via Ashore and Sandy Hook Channels	Berth Amboy	Hudson River	Arthur Kill South of Tufts Point	Kill Van Kull, Arthur Kill & Newark Bay, Southway
Upper Bay and Gravesend Bay	400	500	600	500	600	500	500	500	500	23 M	32 M	34 M	38 M	42 M
Hudson River South of George Washington Bridge	500	400	500	500	600	600	600	600	600	34 M	43 M	45 M	49 M	53 M
Hudson River at Yonkers	600	500	400	600	700	700	700	700	700	41 M	51 M	53 M	57 M	60 M
East River South of Hell Gate	500	500	600	400	500	600	600	600	600	31 M	40 M	42 M	46 M	50 M
East River West of Hunts Point	600	600	700	500	400	600	700	700	700	35 M	44 M	46 M	50 M	54 M
Newark Bay and Tributaries	500	600	700	600	700	400	500	700	700	31 M	40 M	42 M	46 M	50 M
Kill Van Kull and Arthur Kill North of Tufts Point	500	600	700	600	700	500	400	600	600	44 M	53 M	55 M	59 M	63 M
Jamaica Bay	500	600	700	500	700	700	600	400	600	Approximate Mileage Between Points *See Note				
Leonardo via Chapel Hill Channel	500	600	700	600	700	700	600	600						

i.-iv. (No change.)

16:64-[1.7]1.8 Failure to take a **maritime** pilot; penalty
 The master, owner, agent, or charterer on any vessel required to take a **maritime** pilot [which] **that** fails to do so shall be liable for the full amount of pilotage fees set forth in N.J.A.C. 16:64-[1.6]1.7 that would otherwise be due, plus a penalty equal to that amount.

(Agency Note: Existing N.J.A.C. 16:64-1.8 is proposed for recodification with amendments as N.J.A.C. 16:64-1.4.)

SUBCHAPTER 2. MARITIME PILOT APPRENTICESHIP

16:64-2.1 Scope

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

16:64-2.2 Availability and number of apprentices

(a) The number of [Sandy Hook] **maritime** pilot apprentices shall be set by the Commission after consultation with the Sandy Hook Pilots' Association and the New York Board of Pilot Commissioners. The number shall be set, so as to assure [the sufficiency of the] **there is a sufficient** number of licensed [Sandy Hook] **maritime** pilots necessary to safely, properly, and adequately pilot regulated vessels.

(b) (No change.)

16:64-2.3 Qualifications

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

1.-2. (No change.)

3. Is in good physical health and at a minimum meets all of the medical and hearing requirements required of the holder of a First Class Federal Pilots' license without waiver and has passed a chemical drug test for dangerous drugs as set forth in N.J.A.C. 16:64-[7.6]9.6;

4.-9. (No change.)

(b) Applicants shall be screened through an independent testing and review process. The results shall be submitted to a selection committee consisting of one member of the New Jersey Commission or [it's] its Executive Director, if a member is unavailable, one member or the Director of the Board of Commissioners of Pilotage of the State of New York as may be designated by the respective Commission or Board, two New Jersey licensed [Sandy Hook] **maritime** pilots and two New York licensed [Sandy Hook] **maritime** pilots, as nominated by the respective state [Sandy Hook] **maritime** pilots' associations.

(c) By agreement with the Pilots' Associations, the Commission, and the Board of Commissioners of Pilotage of the State of New York, [apprentices] **applicants** selected by the selection committee pursuant to the procedures set [out] **forth** in (b) above may be designated as applicants for the license examination of either state. The Commission may, at its discretion, accept as New Jersey registered apprentices those

so designated after review of the recommendation of the selection committee to ensure that the apprentice meets New Jersey standards for entry into the apprentice program and the State's needs for pilots.

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

(e)-(f) (No change.)

16:64-2.4 The Maritime Pilot Apprenticeship Program

(a) The apprenticeship shall be served under the **Pilots'** Association, [who] **which** shall be responsible for assuring that all apprentices are fully instructed in such manner as to fully qualify them in every respect to perform the duties of a [Sandy Hook] **maritime** pilot. Every apprenticeship shall be served in the pilot vessels of the [Sandy Hook] **maritime** pilots.

(b)-(c) (No change.)

(d) In addition to the experience required to meet (c) above, the apprentice shall make at least 225 [additional] trips during the last nine months of the apprenticeship (at least 40 of which shall be made during hours of darkness) on vessels under the supervision of a licensed [Sandy Hook] **maritime** pilot.

(e) (No change.)

(f) Each apprentice shall comply with the annual medical examination requirements in N.J.A.C. 16:64-7.4.

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

Recodify existing (g) and (h) as **(h) and (i)** (No change in text.)

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

16:64-2.5 Dismissal or suspension of **maritime pilot** apprentices

(a) The Commission may dismiss or suspend any apprentice who:

1.-5. (No change.)

6. Meets any of the grounds set forth in N.J.A.C. [7:61-7.3 or 7.15] **16:64-9.3 or 9.15;**

7.-10. (No change.)

(b) Upon receipt by the Commission of verified information that grounds for dismissal or suspension exist, the apprentice shall be notified of his or her right to request an informal hearing in accordance with N.J.A.C. 16:64-[6.5]**10.5.** The notice shall offer the apprentice the opportunity to contest the determination by requesting a hearing within 10 days of receipt of the notice.

(c)-(d) (No change.)

16:64-2.6 [Examination] **Certification of maritime pilot** apprentices

(a) (No change.)

[b] The Commission shall conduct examinations in accordance with N.J.A.C. 16:64-3, for initial licensure as a deputy pilot on an as-needed basis, depending on the schedule of the certification of apprentices by the **Pilots'** Association and the need to assure the availability of the number of pilots necessary to provide safe, adequate and proper pilotage of regulated vessels.]

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

16:64-[3.2]2.7 Written examination

(a) Every [applicant] **apprentice** for an original license as a deputy pilot [and every licensed pilot applying for an extension of route] shall be required to take and pass a written examination, which shall be prescribed by the Commission. The examination shall be administered and graded under the supervision of the Commission. Any branch pilot may attend such examination **for the sole purpose of observation.**

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

(c) (No change.)

(d) The Commission shall conduct examinations for initial licensure as a deputy pilot on an as-needed basis, depending on the schedule of the certification of apprentices by the Pilots' Association and the need to assure the availability of the number of maritime pilots necessary to provide safe, adequate, and proper pilotage of regulated vessels.

SUBCHAPTER 3. MARITIME PILOT LICENSING

16:64-3.1 Scope

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

(b) This subchapter sets forth the qualifications and procedures that must be satisfied by any person licensed or [wishing] **seeking** to be licensed as a maritime pilot **or seeking to extend or add a route or to obtain a grade advancement.**

(c) Where necessary in the event of an emergency, the Commission may issue a temporary **maritime** pilot license to a person without requiring compliance with this subchapter **and N.J.A.C. 16:64-2.** The temporary license shall remain in effect as long as the Commission determines that the emergency situation exists. The temporary license may be immediately revoked, for any cause or without cause, by the Commission.

(Agency Note: N.J.A.C. 16:64-3.2 is proposed for recodification with amendments as N.J.A.C. 16:64-2.7.)

16:64-[3.3]3.2 Issuance of initial license as a deputy pilot

(a) The Commission, after an [applicant] **apprentice** completes the examination and passages required in N.J.A.C. 16:64-2.4, [3.3] **2.7,** and [3.6] **7.4,** shall review the [applicant's] **apprentice's** results at a regular meeting. The Commission shall decide whether or not the [applicant] **apprentice** has successfully completed the [apprenticeship] **apprentice training program** and the required passages to the satisfaction of the Commission and whether the applicant should be appointed as a deputy pilot. Unless the Commission specifies otherwise, the Commission's decision shall constitute final agency action.

(b) (No change.)

16:64-[3.6]3.3 Oath

[After] **Upon** successful completion of all requirements set forth [herein] **in this subchapter** and approval by the Commission, the Commission President or designee shall administer the oath of [office to the applicant pursuant to N.J.S.A. 12:8-16] **maritime pilots.**

16:64-3.4 Route extension

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

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

(c) The Commission shall consider [the request] **information submitted by the pilot** and [either] deny or approve the application. Unless the Commission specifies otherwise, the Commission's decision regarding the request shall constitute final agency action.

(**Agency Note:** N.J.A.C. 16:64-3.5, 3.6, 3.7, and 3.8 are proposed for recodification with amendments as N.J.A.C. 16:64-7.4, 3.3, 7.5, and 7.2, respectively.)

16:64-[3.9]3.5 Grades of licenses and grade advancement

(a) (No change.)

(b) The minimum length of service in each grade is set forth in (d) below. The Commission may reduce or increase the grade of a **maritime pilot** in accordance with N.J.A.C. 16:64-[3.11 and 3.12]3.7.

(c) [Pilots] **Maritime pilots** of the first grade shall be designated as full branch pilots; of the second grade, as limited branch pilots; and of the third, fourth, fifth, and sixth grades, as deputy pilots. Upon being advanced to **maritime pilot** of the first grade, [the pilot's license as a deputy pilot shall be withdrawn and a new license as] **the Commission shall issue a full branch pilot [issued] license.**

(d) For all **maritime pilots** who obtain a certificate of appointment from the Commission pursuant to N.J.A.C. 16:64-[3.7(a)]7.5(a) prior to October 1, 2001, the pilot licensed for a specific grade shall not pilot any vessel of draft or registered gross tonnage greater than that indicated in **(d)1 through 8** below. The registered gross tonnage of a vessel shall be the highest tonnage published in Lloyd's Register of Ships. A **maritime pilot** whose license is not of a grade that would allow assignment to the deepest vessel in a tow shall not be assigned to the towing vessel.

1.-8. (No change.)

(e) For all **maritime pilots** who obtain a certificate of appointment from the Commission pursuant to N.J.A.C. 16:64-[3.7(a)]7.5(a) on or after October 1, 2001, the pilot licensed for a specific grade shall not pilot any vessel of draft or registered gross tonnage greater than that indicated in **(e)1 through 8** below. The registered gross tonnage of a vessel shall be the highest tonnage published in Lloyd's Register of Ships. A pilot whose license is not of a grade that would allow assignment to the deepest vessel in a tow shall not be assigned to the towing vessels.

1. Grade 6A: A Grade 6A pilot shall complete a minimum of [one year] **a one-year** length of service in Grade 6A. The draft may not exceed 30 feet and the registered gross tonnage may not exceed [20,000] **32,000**.

2. Grade 6: A Grade 6 pilot shall complete a minimum of [one year] **a one-year** length of service in Grade 6. The draft may not exceed 33 feet and the registered gross tonnage may not exceed [26,000] **36,000**.

3. Grade 5A: A Grade 5A pilot shall complete a minimum of [six-month] **one-year** length of service in Grade 5A. The draft may not exceed 36 feet and the registered gross tonnage may not exceed [33,000] **42,000**.

[4. Grade 5B: A Grade 5B pilot shall complete a minimum of a six-month length of service in Grade 5B. The draft may not exceed 36 feet and the registered gross tonnage may not exceed 36,000.]

[5.] **4.** Grade 5: A Grade 5 pilot shall complete a minimum of [one year] **a one-year** length of service in Grade 5. The draft may not exceed 39 feet and the registered gross tonnage may not exceed [42,000] **48,000**.

[6.] **5.** Grade 4: A Grade 4 pilot shall complete a minimum of [one year] **a one-year** length of service in Grade 4. The draft may not exceed 42 feet and the registered gross tonnage may not exceed [50,000] **58,000**.

[7.] **6.** Grade 3: A Grade 3 pilot shall complete a minimum of [one year] **a one-year** length of service in Grade 3. The draft may not exceed 45 feet and the registered gross tonnage may not exceed [55,000] **64,000**.

[8.] **7.** Grade 2: A Grade 2 pilot shall complete a minimum of [one year] **a one-year** length of service in Grade 2. The draft may not exceed [45] **50** feet and the registered gross tonnage may not exceed 70,000.

[9.] **8.** (No change in text.)

16:64-[3.10]3.6 Reduction in grade of licenses or route suspension

(a) All licenses are subject to a reduction in grade or route suspension by the Commission for any of the causes in N.J.A.C. 16:64-[6.4(a)]**10.4(a)**.

(b) Upon receipt by the Commission of information that grounds for a reduction in grade or route suspension exist, the pilot shall be notified of his or her right to request [an adjudicatory] **a formal hearing** in accordance with N.J.A.C. 16:64-[6.6]10.6.

16:64-[3.11]3.7 Application for increase in grade of licenses

(a) A maritime pilot [wishing] **seeking** to increase the grade of a license [for which approval is required by the Commission] shall give notice to the Commission, through the **Pilots' Association**, requesting a grade increase. This notice shall be submitted [no earlier than] **at least 30** days prior to the eligibility date determined by using the minimum length of service requirements in N.J.A.C. 16:64-[3.9(d)]**3.5(d)**.

(b) Prior to a **maritime pilot** being advanced to a grade [for which approval is required by the Commission], the **Pilots' Association** shall post at least 60 days in advance of the scheduled advancement and continue to be posted, in a prominent location at the [pilots'] **Pilots' Association** headquarters and aboard the station, a notice regarding the **maritime pilot**. The notice, in a form prescribed by the Commission, shall advise all [Sandy Hook] **maritime pilots** of the name of the **maritime pilot** seeking advancement and the manner in which any **maritime pilot** may communicate objections to the Commission. When posted, the President of the **Pilots' Association** or his or her designee shall provide the Commission with a copy of the posted notice and shall state in writing that the notice has been posted as aforesaid.

(c) In the event that adverse information has come to the attention of the **Pilots' Association's** Executive Committee or the President [of the Association], such information shall be sent to the Commission in writing.

(d) The identity of the objector shall not be disclosed by the Commissioner or the **Pilots' Association**, except as may be required by [legal process] **law**.

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

SUBCHAPTER 4. MARITIME PILOT BOATS AND STATIONS

16:64-4.1 Scope

This subchapter sets forth [certain] requirements regarding the operation of **maritime pilot** vessels and pilot stations.

16:64-4.2 Stationing of **maritime pilots**

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

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

16:64-4.3 Log books

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

1. (No change.)
2. The name(s) of the **maritime** pilot(s) embarking or disembarking the vessel;
3. (No change.)
4. The time the **maritime** pilot(s) embarked or disembarked the vessel; and
5. (No change.)

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

(Agency Note: N.J.A.C. 16:64-5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 6, 7, 8.1, and 9 are recodified with amendments as N.J.A.C. 16:64-8.1, 8.2, 8.3, 7.6, 7.3, 8.4, 7.7, 10, 9, 6, and 5, respectively.)

SUBCHAPTER [9.] 5. DOCKING PILOT APPRENTICESHIP PROGRAM

16:64-[9.1]5.1 Scope

This subchapter prescribes the necessary qualifications and application procedures for persons [wishing] **seeking** to be admitted to the apprenticeship program for docking pilots. This subchapter also prescribes the requirements of the docking pilot apprenticeship program.

16:64-[9.2]5.2 List of apprentices

A list of docking pilot applicants shall be approved by the Commission once every two years. Prior to approval the applicants shall be screened through an independent testing and review process. The testing and review process shall be done by a selection committee consisting of the Commission's Executive Director, one Commissioner appointed by the President, and two docking pilots appointed by the President. The availability of openings for applicant apprentices shall be posted on the Commission's website at: <http://www.state.nj.us/transportation/maritimepilot/> and advertised in an appropriate trade journal. Qualified applicants shall be considered without discrimination because of race, color, religion, national origin, sex, or marital status. Docking pilot applications approved in any year may remain on the list for [subsequent years, so long as they remain qualified under N.J.A.C. 16:64-9.3] **a period of two years from the date the list is approved by the Commission.**

16:64-[9.3]5.3 Qualifications

(a) A person [wishing] **seeking** to be considered by the Commission as an apprentice shall submit a completed application form and a fee of \$500.00 to the Commission to cover administrative costs of the Commission.

(b) Applicants shall provide to the Commission at the time of application:

- 1.-9. (No change.)
10. Evidence of being able to satisfactorily pass one of the following tests for color perception without the use of color sensing lenses:
 - i.-vii. (No change.)
 - viii. Williams Lantern; [and]
11. A Transportation Worker Identification Credential (TWIC) issued by the U.S. Department of Homeland Security[.];
12. **A current first class pilot's license or first class pilot endorsement to a license issued by the United States Coast Guard authorizing the piloting of vessels of any tonnage and endorsed for at least one section of the waters for which pilotage service may be required; and**
13. **A current unlimited radar observer's certificate as required by the United States Coast Guard.**

(c) Before an apprentice who is on the approved list may begin their apprenticeship he or she shall provide to the Commission:

1. A written endorsement from an independent pilot association or ship docking company stating that they will employ the applicant and be responsible to instruct the apprentice in such a manner, so as to fully qualify the apprentice as a docking pilot[; and].

2. Evidence that he or she has a current first call pilot endorsement to his or her merchant mariner document or equivalent, issued by the United States Coast Guard, authorizing the piloting of vessels of any tonnage and endorsed for at least one section of the waters for which pilotage service may be required.]

16:64-[9.4]5.4 Docking pilot apprenticeship program

(a) The docking pilot apprenticeship shall be served under the supervision of an [independent pilot association or ship docking] **Independent Pilots' Association or Ship Docking** company or both, which shall be responsible for assuring that [all] **each** apprentice[s are] **is** fully instructed in such manner as to fully qualify [them] **him or her** in every respect to perform the duties of a docking pilot. The apprenticeship program will be served over a minimum term of two years.

(b) A course of study for the apprentice shall be submitted by the [independent docking pilot association or ship docking] **Independent Pilots' Association or Ship Docking** company or both. It shall describe the practical and classroom training to be provided to the **docking pilot** apprentice. After review, the Commission shall approve the course of study if it meets the requirements of this chapter.

(c) During the apprenticeship, all **docking pilot** apprentices must:

1. Observe a minimum of 200 dockings, undockings, or in-harbor movements assisted by a tugboat or tugboats on the bridge of a ship not less than 10,000 gross tons in pilotage waters, at least 50 of which shall be done during hours of darkness. With respect to each such docking, undocking, or movement, the **docking pilot** apprentice shall remain on the bridge of the ship during the entire time the ship is being piloted by a docking pilot. If, in the judgment of the docking pilot, the **docking pilot** apprentice possesses the requisite skill to conduct a docking, undocking, or transit under supervision of the docking pilot, the docking pilot may permit the apprentice to do so;

2.-3. (No change.)

4. Provide written documentation signed by the docking pilot under whose authority the apprentice is working, of the movements required by (c)1 through 3 above, on a form proscribed by the Commission; [and]

5. Comply with the annual medical examination requirements in N.J.A.C. 16:64-7.4;

[5.] **6. Make annual appearances before the Commission to review the docking pilot apprentice's education, training, progress, and state of health[.]; and**

7. If a docking pilot apprentice is absent from duty for more than 30 consecutive calendar days, the Independent Pilots' Association shall report the absence to the Commission, and the Commission may, after consultation with the Independent Pilots' Association, require the docking pilot apprentice to make up the time lost.

(d)-(e) (No change.)

16:64-[9.5]5.5 Dismissal or suspension of docking pilot apprentices

(a) A docking pilot apprentice may be dismissed or suspended from the program on a showing that he or she:

- 1.-2. (No change.)
3. Has failed to comply with the by-laws, rules of employment, and requirements of the apprenticeship program of the respective [independent docking pilot association or ship docking] **Independent Pilots' Association or Ship Docking** company under which the **docking pilot** apprentice is serving his or her apprenticeship;
4. Meets any of the grounds in N.J.A.C. 16:64-[7.3 or 7.15]9.3 or 9.15;
- 5.-6. (No change.)
7. Is incapable, for medical or any other good reason, of discharging the necessary functions and duties of [an] **a docking pilot** apprentice [pilot];
8. Has engaged in conduct unbecoming [an] **a docking pilot** apprentice; or
9. (No change.)

(b) Upon receipt by the Commission of verified information that grounds for dismissal or suspension exist, the apprentice shall be notified of his or her right to request an informal hearing in accordance with N.J.A.C. 16:64-10.5. The notice shall offer the apprentice the opportunity to contest the determination by requesting a hearing within 10 days of receipt of the notice.

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

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

16:64-[9.6]5.6 [Issuance] Certification and licensure of docking pilot [licenses to] apprentices

(a) After [an] a **docking pilot** apprentice has completed all the requirements of the docking pilot apprenticeship, the [independent pilot associations and ship docking] **Independent Pilots' Association or Ship Docking** company, or both as applicable, shall provide a certification of the **docking pilot** apprentice's record in a form acceptable to the Commission.

1. The form shall contain a certification that the **docking pilot** apprentice has complied with the requirements of this chapter and has demonstrated the requisite competency to perform the duties of a docking pilot.

2. [The] **After the docking pilot apprentice has completed all the requirements of the docking pilot apprentice program and the written examination**, the Commission shall review the records and the examination results and, after considering the need for additional qualified docking pilots in consultation with the shipping industry, [independent pilot associations and ship docking companies] **the Independent Pilots' Association or Ship Docking company**, make a licensing decision on the apprentice.

(b) Should the Commission decline to issue a license to [an] a **docking pilot** apprentice, it shall give the reasons for declining the license, in writing, to the **docking pilot** apprentice.

SUBCHAPTER [8.] 6. DOCKING PILOTS

16:64-[8.1]6.1 Licensing and oaths of docking pilots

(a) (No change.)

(b) Anyone wishing to be licensed as a docking pilot who is not qualified by virtue of N.J.S.A. 12:8-49 shall be required to complete the apprenticeship program specified in N.J.A.C. 16:64-[9]5 before being considered by the Commission for such licensing.

(c) (No change.)

(d) Upon being approved by the Commission, a docking pilot shall be administered the Oath of Office by the President or, in their absence, any other Commissioner.]

16:64-6.2 Oath

After successful completion of all requirements set forth N.J.A.C. 16:64-5 and approval by the Commission, the Commission President or designee shall administer the oath of office to the docking pilot apprentice.

SUBCHAPTER 7. GENERAL LICENSE REQUIREMENTS

16:64-7.1 Scope

This subchapter sets forth the requirements and duties that must be met by all maritime pilots and docking pilots.

16:64-[3.8]7.2 General license requirements

(a) No person may operate as a [licensed maritime] pilot, unless such person:

1. Maintains a current ARPA (automatic radar plotting aid) (**maritime pilots only**) and radar certificate;

2. Maintains a valid Federal merchant mariner credential or equivalent [and] with first class pilot endorsement[s] for the routes to be traversed;

3. Has fulfilled all of the requirements of the continuing education program approved by the Commission pursuant to N.J.A.C. 16:64-[5.7]7.7;

4. Has submitted to the Commission [and the Association] evidence of the successful completion of required medical examinations; and

5. (No change.)

(b) All pilots shall appear before the Commission every year at the [next] Commission meeting following the anniversary date of the pilot's [attainment of deputy pilot status] **licensure**. In the event of a conflict,

the Commission may allow the pilot to appear at a later meeting. At least seven days before the meeting, the pilot shall provide:

1. A completed annual report form for the past year beginning on the anniversary date of the license, which shall require the pilot to include:

i.-iv. (No change.)

2. Copies of the results of the medical examinations set forth at N.J.A.C. 16:64-[3.6]7.4; and

3. (No change.)

16:64-[5.5]7.3 Route currency

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

1.-3. (No change.)

4. Obstructions, traffic conditions, and changes since the pilot's last trip over the route.

(b) In the event a pilot has been absent from the performance of pilotage duty or it is anticipated that the pilot will be absent for a period of time in excess of [90] **30** continuous days, for reasons other than illness or injury, the pilot shall notify the Commission [and the President of the Association] in writing. The notice shall include the reasons for the absence and the date the pilot expects to resume pilotage duties.

(c) A pilot who has not performed pilotage duties for more than 30 continuous days shall, prior to resuming piloting activities, submit a written certification to the Commission that the pilot is fully conversant with the conditions in (a) above. The Commission may require the pilot to appear before the Commission prior to resumption of piloting duties and/or may, at its discretion, condition the pilot's return to duty upon the completion of a specified number of observation trips over the routes the pilot will be piloting upon return to duty.

(d) (No change.)

16:64-[3.5]7.4 Medical examination

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

1.-3. (No change.)

4. Color perception as specified at N.J.A.C. 16:64-2.3(a)5 or **5.3(b)10**.

(b) The examinations shall be performed by a physician as defined in N.J.A.C. 16:64-1.3. The physician shall provide his or her medical opinion as to whether the pilot [or apprentice] is competent to perform the duties of a pilot. The results of the examinations shall be reported to the Commission [and the Association] on forms that have been approved by the Commission at the time of the examination. The pilot shall provide the physician with a Commission-approved written description of a pilot's duties, which shall be signed and dated by the physician and returned to the Commission. The pilot shall advise the physician of all medications he or she is taking. The doctor must certify on the form provided by the Commission that the use of the medications shall not adversely [effect] **affect** the pilot's ability to perform his or her duties. A new form shall be required every time a pilot changes medications or changes the medication dosage and/or frequency.

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

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

[1. Refuse to grant an original license and/or appointment;]

[2.] **1.** Suspend or revoke an existing license or apprenticeship pursuant to N.J.A.C. 16:64-[6.4]10.4;

[3.] **2.** Issue an Order [which] **that** imposes conditions or limitations on the pilot's license [or on the apprentice's training program]; and/or

[4.] **3.** (No change in text.)

(e) [The Association shall not assign to] **A pilot shall not be permitted to pilot** a vessel [a pilot or an apprentice] if the pilot [or apprentice] has not successfully completed the annual medical

examination required in (a) above or examinations as may be required in (c) above.

(f) [Every] A pilot shall [also] annually provide the Commission with copies of the medical examination form [they are] **the pilot is** required to submit to the U.S. Coast Guard. In addition, the pilot shall provide the Commission copies of [any and] all correspondence with the Coast Guard related to the medical examination including, but not limited to, copies of the Coast Guard's receipt of the examination, additional information provided to the Coast Guard, and any waivers granted by the Coast Guard.

16:64-[3.7]7.5 Retirement and age-related requirements

(a) All pilots over the age of 65 shall **obtain and** submit [each year to] two physical examinations **each year**, as specified in N.J.A.C. 16:64-[3.6]7.4. The second examination shall take place approximately six months after the first examination.

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

16:64-[5.4]7.6 Illness

(a)-(b) (No change.)

(c) Before allowing the pilot to return to duty, the Commission may require the pilot to:

1. (No change.)
2. Complete the observation trips as set forth in N.J.A.C. 16:64-[5.5(c)]7.3(c); and/or
3. (No change.)

16:64-[5.7]7.7 Recurrent training

(a) All [licensed maritime and docking] pilots shall be required to undergo recurrent training, **implemented by the Pilots' Association and/or Independent Pilots' Association**, in a form and frequency approved by the Commission [by November 18, 2008, and once every year thereafter, on or before the first day of November. Each pilot shall ensure that the Association, the Independent Pilot Association(s) and/or ship docking companies the docking pilot is affiliated with (as appropriate) submits a detailed plan to the Commission for recurrent training of all licensed pilots for the calendar year following the submission.] **pursuant to a detailed plan submitted to the Commission. Upon completion of the training each pilot shall submit a certificate of completion.**

(b) The Commission shall review the plans to assure that [they] **the plans** provide for an appropriate level and schedule of training, which may include, but not be limited to, bridge resource management, emergency ship handling, and communications[, for all pilots].

(c) The Commission shall approve [the plan] or reject [it] **the plan**. In the event the Commission rejects the plan, it shall advise the [person or entity that submitted the plan of what] **Pilots' Association and/or the Independent Pilots' Association of needed changes [are] required for the Commission to approve the plan. The [person or entity that submitted the plan] Pilots' Association or the Independent Pilots' Association shall submit a revised plan for the Commission's review and approval within 30 days of receipt of the Commission's rejection.**

[(d) Following Commission approval of a plan, the pilot shall ensure that the plan is implemented.]

[(e)] **(d)** (No change in text.)

SUBCHAPTER [5.] 8. DUTIES OF PILOTAGE

16:64-[5.1]8.1 Scope

This subchapter sets forth the duties and requirements that must be met by all [licensed] **maritime pilots, docking pilots, and apprentices, except as otherwise noted.**

16:64-[5.2]8.2 Piloting duties

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

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

(c)-(d) (No change.)

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

(f)-(j) (No change.)

16:64-[5.3]8.3 Master-pilot conference and unsafe passages

(a)-(c) (No change.)

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

1.-4. (No change.)

(e) In the event the master, despite the pilot's advice to the contrary in (d) above, commences the passage, **the docking, or the undocking**, or states an intention to [commence the passage] **do so**, the pilot shall:

1.-2. (No change.)

(f) (No change.)

16:64-[5.6]8.4 Occurrences

(a) Any pilot or apprentice who witnesses an occurrence or who is aboard a vessel involved in an occurrence shall comply with [(a)] and 2 below. An occurrence includes any possible collision, allision, stranding, touching of bottom, power loss, steering loss, damage to or loss of property, personal injury or discharge of a substance into the water.] **the following:**

1. Immediately after the occurrence, and as soon as the pilot's or apprentice's services are no longer needed, provide a **verbal** report to the Commission; [and]

2. Within 72 hours, or one business day, whichever is longer, provide the Commission with a written report, on a form provided by the Commission, [which provides] **with a detailed description of the occurrence[.] and photostatic copies of other material that might assist in investigating and determining the cause of the occurrence, which may include:**

i. Witness statements;

ii. Deck and engine log books and bell books;

iii. Pilot cards;

iv. Voyage plans;

v. Photographs;

vi. Position plots;

vii. Soundings; and

viii. Depth-measuring devices printouts; and

3. Submit to a post-occurrence chemical drug test for evidence of dangerous drugs and alcohol in accordance with the requirements of N.J.A.C. 16:64-9.9.

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

(b) When requested by the Commission, the pilot shall deliver immediately to the Commission copies of any additional documents within the pilot's possession and/or control.

(c) In addition to the reports required in (a) and (b) above, the **Pilots' Association**, [ship docking company] **and/or Independent [Pilot] Pilots' Association**, as appropriate shall promptly investigate any occurrence, which occurs during the time a pilot licensed by the Commission was piloting a vessel involved in an occurrence and the occurrence results in one or more of the following:

1.-6. (No change.)

[(d) The pilot shall, when requested by the Commission, not later than 30 calendar days after said occurrence obtain and deliver to the Commission copies of the following:

1. Witness statements;

2. Log books (rough and smooth);

3. Printouts from course recorders, depth-measuring devices, and engine orders;

4. Position plots;

5. Photographs; and

6. Soundings.]

[(e)] (d) The **Pilots' Association**, [ship docking company] and/or Independent [pilot association, as appropriate,] **Pilots' Association** shall not be required to provide the Commission with any opinions or conclusions of its investigators as to the culpability of a pilot licensed by the Commission **but shall not be prohibited from doing so.**

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

(f) Any pilot or apprentice who fails to make a verbal report or file the written report required by (a) above may be fined \$500.00 for each day the report is late. Any reports filed later than 10 days after the incident shall, in addition to this penalty, subject the pilot to further disciplinary action pursuant to N.J.A.C. 16:64-[6]10. Fines shall **continue to be doubled** [in the event of a second] **for each subsequent** offense.

SUBCHAPTER [7.] 9. **WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS AND DRUG-FREE WORKSHOP PROGRAM**

16:64-[7.1]9.1 Scope

(a) The purpose of this subchapter is to maintain a drug- and alcohol-free workplace. This subchapter applies to **all** maritime pilots, [and] docking pilots, **and apprentices.**

(b)-(c) (No change.)

16:64-[7.2]9.2 Definitions

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

...
 "Fails a chemical drug test for **dangerous drugs**" means **that** the [test] result of **a chemical test conducted pursuant to this chapter** is reported as positive [for the presence of dangerous drugs or drug metabolites in an individual's system after] **by a Medical Review [Officer's review] Office because the chemical test indicated the presence of a dangerous drug or drug metabolite.**

["Intoxicant" as used throughout 46 CFR Part 16 and 40 means any form of alcohol, dangerous drug or combination thereof.]

...
 "Medical Review Officer" or "MRO" means a **person who is a licensed physician** [designated by the Association to carry out the duties specified by this subchapter and who meets the qualifications of 49 CFR 40.33(b)] **and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results as set forth in 46 CFR 16.105 and 49 CFR 121.**

...
 "Pass or passes a chemical drug test" means [not to test positive] **the result of a chemical test is reported as "negative"** for the presence of dangerous drugs or drug metabolites [in an individual's system after] **by a Medical Review Officer's review.**

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

16:64-[7.3]9.3 Prohibitions

(a) No pilot or apprentice shall:

1. Use, possess, manufacture, distribute, sell, or dispense dangerous drugs at any time when on duty or off duty, except as set forth in N.J.A.C. 16:64-[7.4]9.4;

2.-5. (No change.)

(b) (No change.)

16:64-[7.4]9.4 Use of prescribed dangerous drugs

(a) (No change.)

(b) Prior to use of the **prescribed dangerous** drug while on duty or subject to being called to duty[:] **a pilot shall provide to the Commission a statement from the pilot's treating physician that the use of the dangerous drug will not interfere with the safe performance of the pilot's duty.**

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

i. A written certification from a physician that the pilot or apprentice described his or her assigned duties to the prescribing physician before the drug was prescribed and furnished the physician with a written official description, provided by the Commission, of the assigned duties, and that the physician provided advice that the use of the drug at the prescribed dosage is consistent with the safe performance of the assigned duties;

ii. A written and sworn certification by the pilot or apprentice that the drug is in the original container which is clearly labeled with the pilot or apprentice's name, the name of the drug, and the prescribing physician's Federal Drug Enforcement Administration number and that the drug shall be used at the prescribed dosage; and

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

16:64-[7.5]9.5 Implied consent: cooperation with collection, testing, and record review

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

1. (No change.)

2. Supply all information requested by the laboratory **or testing facility;**

3.-4. (No change.)

(b) The **Pilots' Association or the Independent Pilots' Association** shall be notified immediately if a pilot or apprentice fails to comply or cooperate with collection site personnel or any collection or testing procedures in this subchapter. [The Association shall not assign a pilot or apprentice to] **The pilot shall not perform** any duties [and immediately inform the Commission of any such failure] **following his or her failure to comply or cooperate with collection.**

(c) (No change.)

16:64-[7.6]9.6 Pre-registration testing

(a) The Commission shall not [enter on its books nor shall the Association employ an individual as an apprentice unless the individual] **permit any applicant to enter into any apprenticeship program unless the applicant** passes a chemical drug test for dangerous drugs.

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

16:64-[7.7]9.7 Random testing

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

(b)-(c) (No change.)

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

16:64-[7.8]9.8 Reasonable belief testing

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

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

(c) Any [Sandy Hook] pilot or apprentice who entertains a reasonable belief, as set forth in (b) above, shall immediately notify the President or [member of the Executive Committee of the] **his or her designee of the Pilots' Association and the Independent Pilots' Association**. The President or [member of the Executive Committee] **his or her designee of the Pilots' Association and the Independent Pilots' Association** shall direct the pilot or apprentice to undergo a chemical drug test for dangerous drugs and alcohol as soon as practicable, but not more than eight hours after the President or member of the Executive Committee of the **Pilots' Association and the Independent Pilots' Association** is made aware of a reasonable belief.

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

1. (No change.)
 2. Is signed by the [Sandy Hook] **licensed pilots** in (c) above and the President or [member of the Executive Committee] **his or her designee of the Pilots' Association and the Independent Pilots' Association**; and
 3. (No change.)
- (e) (No change.)

16:64-[7.9]9.9 Post-occurrence testing

(a) A pilot or apprentice is considered to be involved in an "occurrence" if he or she is conning the vessel or is assisting the conning officer in any way in the navigation of the vessel.

[(a)] (b) A pilot or apprentice shall submit to a post-occurrence chemical drug test for dangerous drugs and alcohol if he or she is involved in an occurrence[, except nothing herein shall apply to pilot or apprentice who is only a witness to an occurrence.] arising out of or related to, their conning the vessel or assisting the conning officer in any way in the navigation of the vessel, and which results in any of the following:

1. **One or more deaths;**
2. **An injury to a pilot, apprentice, crewmember, or other person, which requires professional medical treatment beyond first aid or renders any of the above unfit to perform routine duties;**
3. **A collision;**
4. **A grounding;**
5. **An allision with a fixed object, including, but not limited to, a dock or berth, bridge, or navigational aid causing property damage in excess of \$25,000 (including the cost of labor and material to restore the property to its condition before the occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage); or**
6. **A discharge of oil or hazardous substance into navigable waters of the Port of New York and New Jersey or a release of a hazardous substance into the environment;**

[(b)] (c) The President [or member or the Executive Committee] of the Pilots' Association or the Independent Pilots' Association, or his or her designee shall [direct] ensure the pilot [or] and apprentice involved in [the] an occurrence [to undergo a] resulting in one or more of the threshold events in (b) above undergoes:

1. **A chemical drug test for dangerous drugs [and alcohol as soon as practicable, but not more than eight hours after the occurrence.] within 32 hours of when the incident occurred, unless precluded by safety concerns directly related to the incident;**
2. **An alcohol test within two hours of when the incident occurred, unless precluded by safety concerns directly related to the incident; and**
3. **When the post-occurrence testing is required by the Commission, the test for dangerous drugs shall be conducted as soon as possible, but no later than 32 hours after such request was communicated to the pilot or no later than 32 hours after such request was communicated to the pilot or apprentice, and the alcohol test shall be conducted as soon as possible, but no later than two hours after such request was communicated to the pilot or apprentice.**

(d) Upon receipt of the report of chemical test results, the Pilots' Association or the Independent Pilot Association shall submit a copy of the test results for each pilot or apprentice to the Commission not later than 24 hours from the time of receipt.

[(c)] (e) (No change in text.)

16:64-9.10 Drug testing procedures

Drug testing programs required by this subchapter must be conducted in accordance with 49 CFR Part 40, Procedures for Transportation Workplace Testing Programs, regarding the preparation for drug testing, specimen collection, and laboratory analysis, which are incorporated herein by reference. The regulations in 49 CFR Part 40 must be consulted to determine the specific procedures that must be established and utilized. Drug testing programs required by this subchapter must use only drug testing laboratories certified by the Federal Department of Health and Human Services.

16:64-[7.11]9.11 Alcohol testing procedures

(a) (No change.)
 (b) The screening shall be performed by personnel employed by the drug testing facility with which a contract has been entered pursuant to N.J.A.C. 16:64-[7.16]9.16.

(c) (No change.)
 (d) A test of a [BAC] **blood alcohol concentration** level above or at 0.04 percent level shall require follow-up chemical drug testing in order to confirm the precise alcohol level. The President or a member of the Executive Committee of the **Pilots' Association or the Independent Pilots' Association** shall direct the pilot or apprentice screening positive to report for a blood test for alcohol as soon as practicable, but not more than one hour after the initial screening. The blood sample shall be collected, tested, and reported under the chain of custody procedures by qualified, trained personnel employed by the drug testing facility with which a contract has been entered pursuant to N.J.A.C. 16:64-[7.16]9.16.

(e) A pilot or apprentice shall be deemed to have tested positive for alcohol if the confirming blood test shows a **blood alcohol concentration** level [that meets the definition of a positive alcohol test] **above or at 0.04 percent.**

16:64-[7.12]9.12 Verification by the Medical Review Officer

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

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

(c) (No change.)
 (d) The MRO shall immediately report all verified positive test results and indicate the dangerous drugs and/or alcohol for which there was a verified positive test to the President of the **Pilots' Association or the Independent Pilots' Association** or his or her designee[s].

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

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

16:64-[7.13]9.13 Protection of records

(a) (No change.)
 (b) The MRO shall maintain the confidentiality of the chemical drug tests and report only verified positive test results and the drugs and/or alcohol for which there was a verified positive test to the **President of the Pilots' Association, the Independent Pilots' Association** and/or the Commission.

(c) The **Pilots' Association or the Independent Pilots' Association** and the Commission shall maintain the confidentiality of the chemical

drug test results and release information regarding verified positive tests only in:

1.-3. (No change.)

(d) The laboratory and the MRO shall disclose information related to a positive chemical drug test of an individual only to the individual, the **Pilots' Association or the Independent Pilots' Association**, the Commission, or decision maker in a lawsuit, grievance, or other proceeding arising from a verified positive chemical drug test.

(e) (No change.)

16:64-[7.14]9.14 Notice requirements

(a)-(c) (No change.)

(d) The outcome of the test(s) as required in (b) above shall be reported to the Commission by the **Pilots' Association or the Independent Pilots' Association** within 24 hours of its receipt.

(e) (No change.)

16:64-[7.15]9.15 Penalties

(a) Any pilot who violates either of the prohibitions in N.J.A.C. 16:64-[7.3(a)2]9.3(a)2 or 3 shall immediately be suspended from engaging in pilotage operations pursuant to N.J.A.C. 16:64-[6.4(b)]10.4(b).

(b) The Commission may, after the opportunity for [an adjudicatory] a **formal** hearing pursuant to N.J.A.C. 16:64-[6.6]10.6:

1.-2. (No change.)

(c) Any apprentice who violates either of the prohibitions in N.J.A.C. 16:64-[7.3(a)2]9.3(a)2 or 3 shall immediately be prohibited from engaging in pilotage operations and may, after opportunity for [a show cause] **an informal** hearing pursuant to N.J.A.C. 16:64-2.5, be suspended or have his or her registration permanently revoked.

(d) Any pilot or apprentice who fails to comply or cooperate with specimen collection and/or chemical drug testing; or who tests positive on a chemical drug test required pursuant to this subchapter or a chemical drug test required pursuant to a Federal statute or regulations, including 46 CFR Part 16; or who is convicted under a Federal or state criminal drug statute or second conviction under any state statute for operating while under the influence or operating while intoxicated; or who violates any other provision of this subchapter shall immediately be suspended from engaging in pilotage operations and may, after opportunity for a **formal** hearing pursuant to N.J.A.C. 16:64-[6.4(c)]10.4(c) (for pilots) or 2.5 (for apprentices), have his or her license/registration permanently revoked unless there are extenuating circumstances, which, in the discretion of the Commission, justify only the suspension of his or her license/registration.

(e) Any pilot or apprentice who was prohibited from engaging in pilotage operations pending a hearing before the Commission and who, **following the hearing** is not suspended or who does not have his or her license/registration revoked [following the hearing before the Commission] shall be returned to normal duties.

(f)-(g) (No change.)

16:64-[7.16]9.16 Responsibilities of the **Pilots' Association and the Independent Pilots' Association**

(a) After consultation with and approval by the Commission, the **Pilots' Association, and the Independent Pilots' Association** shall promptly enter into an agreement(s) or contract(s) with a testing facility and a **Medical Review Officer** (MRO), and subsequent facilities and MROs as necessary, for the performance of the tests and duties required by this subchapter.

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

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

(d)-(e) (No change.)

(f) The **Pilots' Association and the Independent Pilots' Association** shall submit a copy of its proposed and amended procedures for the implementation of this subchapter and copies of the agreement(s) or contract(s) in (a) above to the Commission for review and approval.

SUBCHAPTER [6.] 10. PENALTIES, ORDERS, AND HEARINGS

16:64-[6.1]10.1 Scope

This subchapter sets forth the Commission's procedures for the issuance of penalties and orders, and the conduct of hearings as they apply to all **maritime pilots, docking pilots, and apprentices**.

16:64-[6.2]10.2 Investigations and penalties

(a)-(b) (No change.)

(c) [The] **Except as set forth in N.J.A.C. 16:64-8.4(c) and 9.15, the Commission may include in any order it issues, a fine of up to \$1,000 [on] for the first offence committed by any pilot or apprentice [who violates] for any violation of any provision of this chapter. Fines for [second] subsequent offences may be up to \$5,000.**

(d) The Commission may also issue such cautionary letters or letters of reprimands to pilots for violation of any provision of this chapter, **and order pilot or apprentice to undergo additional training** as [it] **the Commission** deems appropriate.

16:64-[6.3]10.3 Orders of the Commission

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

1.-4. (No change.)

5. The requirement to appear before the Commission at an informal hearing conducted pursuant to N.J.A.C. 16:64-[6.5]10.5; and

6. The requirement to immediately cease engagement in pilotage operations pursuant to N.J.A.C. 16:64-[6.4(b)]10.4(b).

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

16:64-[6.4]10.4 Suspension, limitation, or revocation of a license

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

1.-5. (No change.)

6. The pilot meets any of the grounds in N.J.A.C. 16:64-[7.3 or 7.15]9.3 or 9.15;

7.-8. (No change.)

(b) Where the Commission deems it necessary, it may issue an Order immediately prohibiting the pilot **for a period up to 30 days** from engaging in pilotage operations. Such an Order shall include the Commission's grounds for its action and shall permit the pilot, at the pilot's discretion, to request an informal hearing, in accordance with N.J.A.C. 16:64-[6.5]10.5, within a reasonable time of the date of the Order, or request [an adjudicatory] a **formal** hearing, in accordance with N.J.A.C. 16:64-[6.6]10.6, as soon as same can be scheduled.

(c) Before a pilot's license is limited, suspended, or revoked, unless it is done so pursuant to (b) above, the Commission shall issue an Order of limitation, suspension, or revocation [which] **that** includes the Commission's grounds for the action, the effective date of the action, and an opportunity for the pilot to request an informal hearing, pursuant to N.J.A.C. 16:64-[6.5]10.5.

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

16:64-[6.5]10.5 Informal hearing

(a) The Commission may issue an Order to a pilot **or apprentice**, in the form of a written notice, requiring the pilot **or apprentice** to appear before the Commission at an informal hearing.

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

1. The date, time, and place where the [person] **pilot or apprentice** is required to appear;

2. (No change.)

3. Where appropriate, that the [person] **pilot or apprentice** has the right to challenge the Commission’s proposed action.

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

1. (No change.)

2. By certified mail return receipt requested to the [person’s] **pilot’s or apprentice’s** usual place of abode as it appears in the records of the Commission.

(d) An informal hearing shall be conducted as follows:

1. (No change.)

2. The informal hearing shall not be conducted in accordance with the [adjudicatory] **formal** hearing procedures set forth in N.J.A.C. 1:1. However, any person appearing at an informal hearing shall have the right to testify, produce evidence and/or witnesses, bring an attorney or other representative pursuant to New Jersey Court Rule R. 1:21-1(e), and cross-examine any witnesses.

(e) The Commission shall give due consideration of the issues presented and may issue an Order in accordance with N.J.A.C. 16:64-[6.3]**10.3**.

16:64-[6.6]**10.6** [Adjudicatory] **Formal** hearings

(a) Any person authorized to request [an adjudicatory] **a formal** hearing in this chapter may request a hearing by sending written notice to

the Commission. The notice shall be postmarked no later than 30 calendar days after the receipt of the Commission’s action. The request for a hearing shall include:

1.-2. (No change.)

(b) (No change.)

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

(d) Where the Commission conducts [an adjudicatory] **a formal** hearing, the following process shall be used:

1.-2. (No change.)

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