

N.J.A.C. 16:64 (2017)

**TITLE 16. TRANSPORTATION
CHAPTER 64. RULES OF THE NEW JERSEY MARITIME
PILOT AND DOCKING PILOT COMMISSION**

SUBCHAPTER 1. GENERAL PROVISIONS

16:64-1.1 Purpose and scope

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

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

(c) This chapter applies to all licensed pilots and registered apprentices regardless of their classification or grade. Every licensed pilot and apprentice shall be responsible to know the contents of and comply with this chapter.

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

16:64-1.2 Construction, severability and waiver

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

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

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

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:

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

"Apprentice" means a person who is listed as a qualified apprentice with the Commission pursuant to section 34 of P.L. 2004. c. 72 (N.J.S.A. 12:8-50) 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.

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

"Commission" means the New Jersey Maritime Pilot and Docking Pilot Commission established by N.J.S.A. 12:8-1 et seq.

"Commission President" means the President of the New Jersey Maritime Pilot and Docking Pilot Commission.

"Commissioners" means the Commissioners of the New Jersey Maritime Pilot and Docking Pilot Commission appointed by the Governor pursuant to N.J.S.A. 12:8-1 et seq.

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

"Docking pilot" means a person licensed by the Commission and entered in the Register maintained pursuant to N.J.S.A. 12:8-52.

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

"Independent Pilot Association" means any association of pilots or docking pilots, other than the United New York and New Jersey Sandy Hook Pilots' Benevolent Associations, whose members are qualified to pilot vessels in pilotage waters.

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

"Maritime pilot" means a person licensed by the Commission pursuant to N.J.S.A. 12:8-15.

"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. 16:64-10.3.

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

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

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

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

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

"Sandy Hook pilot" means a person licensed in accordance with New Jersey or New York state law to pilot regulated vessels and is a member of the Pilots' Association as defined in N.J.S.A. 12:8-1.2.

"Secretary" means the Secretary of the New Jersey Maritime Pilot and Docking Pilot Commission.

"Ship docking company" means an enterprise which is regularly engaged in the business of providing docking and undocking services to regulated vessels in pilotage waters utilizing tugboats and docking pilots.

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

16:64-1.4 Incorporation by reference

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

1. United States Code, Title 21, Parts 802 and 812;
2. Code of Federal Regulations, Title 21, Parts 1301-1316;
3. Code of Federal Regulations, Title 49, Part 40, Procedures for Transportation Workplace Drug Testing Programs, Sections 40.23, 40.25, 40.27, 40.29, 40.31, and 40.39; and
4. New Jersey Administrative Code (N.J.A.C. 1:1) Title 1, Chapter 1.

16:64-1.5 New Jersey Maritime Pilot and Docking Pilot Commission

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

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

(e) The Secretary may require a person requesting information from the 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.

16:64-1.6 Requirement to take a maritime pilot

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

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

16:64-1.7 Fees for maritime pilotage

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

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

(b) Fees for maritime pilotage are as follows:

1. For every vessel entering or departing underway on pilotage waters, but not including those south of Sandy Hook, the pilotage rates shall be the same as those charged by maritime pilots licensed by the State of New York. The Commission shall review and adopt these rates by resolution after they are signed into law in the State of New York.

2. Pilotage rates for vessels entering or departing ports and underway on waters of ports south of Sandy Hook to, and including, Atlantic City shall be the same as for vessels as established in (b)1 above.

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 the same as those charged by Maritime Pilots licensed by the state of New York.

16:64-1.8 Failure to take a maritime pilot; penalty

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

SUBCHAPTER 2. MARITIME PILOT APPRENTICESHIP

16:64-2.1 Scope

This subchapter prescribes the necessary qualifications and application procedures for persons seeking to be admitted to the apprenticeship program for 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 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 there is a sufficient number of licensed maritime pilots necessary to safely, properly, and adequately pilot regulated vessels.

(b) 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. These advertisements shall specify a deadline for submitting the applications. Qualified applicants shall be considered without discrimination because of race, color, religion, national origin, sex or marital status.

16:64-2.3 Qualifications

(a) A person 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. Is at least 18 years of age and is not more than 27 years of age no later than April 15 of the year the application is filed;

2. Is of good moral character as evidenced through at least two written references provided by the applicant and background checks as may be directed by the Commission;

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. 16:64-9.6;

4. Has a minimum uncorrected visual acuity of at least 20/50 in each eye, correctable to 20/20 in each eye;

5. Is able to satisfactorily pass one of the following tests for color perception without the use of color sensing lenses:

i. Pseudoisochromatic Plates (Dvornine 2nd Edition; AOC; revised edition or AOC-HRR; Ishihara 16-, 24-, or 38-plate editions);

ii. Eldridge-Green Color Perception Lantern;

iii. Farnworth Lantern;

iv. Keystone Orthoscope;

v. Keystone Telebinocular;

vi. SAMCTT (School of Aviation Medicine Color Threshold Tester);

vii. Titmus Optical Vision Tester; or

viii. Williams Lantern;

6. Holds or will hold a Bachelor's Degree from an accredited college or university by June 30th of the year the application is filed;

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

8. Is a citizen of the United States; and

9. Has demonstrated through an interview and testing process the aptitude, interpersonal skills and physical skills required of a pilot.

(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 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 maritime pilots and two New York licensed maritime pilots, as nominated by the respective state 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, applicants selected by the selection committee pursuant to the procedures set 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) After selection and Commission registration, the apprentice shall become an employee of the Sandy Hook Pilots' Association in accordance with the Act at N.J.S.A. 12:8-10.

(f) Appropriate application and testing fees will be required from all applicants for apprentice selection in an amount sufficient to cover administrative costs and testing fees. Application forms and information concerning the apprenticeship program and application procedures may be obtained from the Sandy Hook Pilots Association, 201 Edgewater Street, Staten Island, New York.

16:64-2.4 The Maritime Pilot Apprenticeship Program

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

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

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

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

2. A Federal Master of Pilot Vessel's License or higher, issued with an endorsement as First Class Pilot or equivalent, and necessary extensions of route for all areas of the ports of New York and New Jersey, all as issued pursuant to 46 CFR Part 10 of the rules of the United States Coast Guard; and

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

(d) In addition to the experience required to meet (c) above, the apprentice shall make at least 225 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 maritime pilot.

(e) The apprenticeship shall include the prescribed academic courses at the Sandy Hook Pilot School, or an equivalent. Instruction shall cover all aspects of piloting and ship handling including, but not limited to: the use of navigation and communication equipment; the Rules of the Road; the use of aids to navigation, tides and currents, soundings, bearings and location of the shoals, rocks, bars, and points of land, courses, distances, and depths of channels; bridge management; and pollution control and environment protection. The apprentice shall learn the use of charts, coast pilots, tide tables, and current tables. The apprentice shall become familiar with the publications of the Army Corps of Engineers, the Coast Guard, the National Oceanic and Atmospheric Administration, the rules of the Commission as contained in this chapter, and such other publications as may pertain to the piloting of vessels in the ports of New York and New Jersey.

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

(g) Each 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.

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

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

(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. Has failed to complete academic assignments or to achieve passing grades on required tests and examinations;
2. Has refused to perform or failed to perform assigned apprenticeship duties or to carry out lawful orders;
3. Has been negligent or incompetent in the performance of assigned apprenticeship duties;
4. Has failed to comply with the by-laws, rules of employment, and requirements of the apprenticeship program of the Sandy Hook Pilots' Association;
5. Has failed to comply with the requirements of this chapter;
6. Meets any of the grounds set forth in N.J.A.C. 16:64-9.3 or 9.15;
7. Has pled guilty or nolo contendere or has been convicted of a crime of moral turpitude;
8. Is incapable, for medical or any other good reason, of discharging the necessary functions and duties of an apprentice pilot;
9. Has engaged in conduct unbecoming an apprentice; or
10. Has misrepresented any information in the application.

(b) Upon a finding by the Commission, based on verified information that grounds for dismissal or suspension exist, the Commission shall order the apprentice to appear at an informal hearing pursuant to N.J.A.C. 16:64-10.5 the informal hearing shall not take place less than 10 days from service of the order to appear.

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

(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.

16:64-2.6 Certification of maritime pilot apprentices

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

(b) The 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.

16:64-2.7 Written examination

(a) Every apprentice for an original license as a deputy pilot 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 apprentice's qualifications for employment as a maritime pilot and knowledge of pilotage routes.

(c) A passing grade on the exam shall be 70 percent on all written sections except Rules of the Road, which shall be 90 percent. Any charts drawn by the apprentice shall be graded on a pass/fail basis.

(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 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.

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

(a) The Commission, after an apprentice completes the examination and passages required in N.J.A.C. 16:64-2.4, 2.7, and 7.4, shall review the apprentice's results at a regular meeting. The Commission shall decide whether or not the apprentice has successfully completed the 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) If the Commission appoints an apprentice as a deputy pilot, the Commission shall issue the deputy pilot a license. The license shall be signed by the President of the Commission.

16:64-3.3 Oath

After successful completion of all requirements set forth in this subchapter and approval by the Commission, the Commission President or designee shall administer the oath of Office to the maritime pilot apprentice.

16:64-3.4 Route extension

(a) A licensed maritime pilot 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 maritime pilot shall observe the maneuvering of the vessels, which may or may not include 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 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 with a signed 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 information submitted by the pilot and deny or approve the application. Unless the Commission specifies otherwise, the Commission's decision regarding the request shall constitute final agency action.

16:64-3.5 Grades of licenses and grade advancement

(a) All increases in grade for maritime pilots shall be approved by the Commission.

(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. 16:64-3.7.

(c) 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 Commission shall issue a full branch pilot license.

(d) (Reserved)

(e) For all maritime pilots who obtain a certificate of appointment from the Commission pursuant to N.J.A.C. 16:64-7.5(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 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 towsing vessels.

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

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

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

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

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

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

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

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

16:64-3.6 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. 16:64-10.4(a).

(b) Upon a finding by the Commission, based on verified information, that grounds for a reduction in grade or route suspension exist, the Commission shall order the pilot to appear at an informal hearing pursuant to N.J.A.C. 16:64-10.5.

(c) If the proposed order is adopted by the Commission at the conclusion of the informal hearing, the pilot shall have the right to request a formal hearing, pursuant to N.J.A.C. 16:64-10.6.

(d) If the Commission orders a reduction in grade or route suspension at the conclusion of the informal hearing, the pilot shall have the right to request a formal hearing, pursuant to N.J.A.C. 16:64-10.6

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

(a) A maritime pilot seeking to increase the grade of a license shall give notice to the Commission, through the Pilots' Association, requesting a grade increase. This notice shall be submitted at least 30 days prior to the eligibility date determined by using the minimum length of service requirements in N.J.A.C. 16:64-3.5(d).

(b) Prior to a maritime pilot being advanced to a grade, 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' Association headquarters and aboard the station, a notice regarding the maritime pilot. The notice, in a form prescribed by the Commission, shall advise all 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, 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 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.

16:64-3.8 (Reserved)

16:64-3.9 (Reserved)

16:64-3.10 (Reserved)

16:64-3.11 (Reserved)

16:64-3.12 (Reserved)

SUBCHAPTER 4. MARITIME PILOT BOATS AND STATIONS

16:64-4.1 Scope

This subchapter sets forth 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, 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. The time of arrival of the cruising pilot vessel on, or departure from, station as applicable;
2. The name(s) of the maritime pilot(s) embarking or disembarking the vessel;

3. The name of the vessel piloted;
4. The time the maritime pilot(s) embarked or disembarked the vessel; and
5. Such additional information as is required in the practice of good seamanship.

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

SUBCHAPTER 5. DOCKING PILOT APPRENTICESHIP PROGRAM

16:64-5.1 Scope

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

16:64-5.2 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 three 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 a period of two years from the date the list is approved by the Commission.

16:64-5.3 Qualifications

(a) A person 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. An authorization executed by the applicant permitting the Commission to obtain from the United States Coast Guard information pertaining to the applicant's Coast Guard license and records;

2. Satisfactory evidence of having participated in a United States Department of Transportation required drug screening and testing program for no less than two years prior to application;

3. Satisfactory evidence of successful completion of a driver's license and criminal background check;

4. A United States Coast Guard form demonstrating examination within the last year by a licensed physician in a manner prescribed by the United States Coast Guard and stating that the applicant has been declared competent by the physician to perform the duties of a docking pilot;

5. Written documentation that the applicant has at least 10 years' experience in the maritime industry, five years of which shall have been served as a licensed mate or master in the towing industry:

i. Attendance at an approved United States maritime college may satisfy up to four years of the foregoing 10-year requirement;

6. Satisfactory evidence of having the ability to read, write, and speak fluent English;

7. At least two written references and background checks as may be directed by the Commission, to demonstrate good moral character;

8. Satisfactory evidence of United States citizenship;

9. Satisfactory evidence of having visual acuity correctable to 20/20 in each eye;

10. Evidence of being able to satisfactorily pass one of the following tests for color perception without the use of color sensing lenses:

i. Pseudoisochromatic Plates (Dvornine 2nd Edition; AOC; revised edition or AOC-HRR; Ishihara 16-, 24-, or 38-plate editions);

ii. Eldridge-Green Color Perception Lantern;

iii. Farnworth Lantern;

iv. Keystone Orthoscope;

v. Keystone Telebinocular;

vi. SAMCTT (School of Aviation Medicine Color Threshold Tester);

vii. Titmus Optical Vision Tester; or

viii. Williams Lantern;

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.

14. A completed Physician's Certification form with a written description of a pilot's duties and a list of all medications taken by the pilot which shall be signed and dated by the physician.

(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.

16:64-5.4 Docking pilot apprenticeship program

(a) The docking pilot apprenticeship shall be served under the supervision of an Independent Pilots' Association or Ship Docking company or both, which shall be responsible for assuring that each apprentice is fully instructed in such manner as to fully qualify 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 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. After meeting the requirements of (c)1 above to the satisfaction of a docking pilot, complete a minimum of 25 dockings, undockings, or in-harbor movements, on pilotage waters, assisted by a tugboat or tugboats, of ships not less than 10,000 gross tons while under the supervision of a licensed docking pilot, at least 25 percent of which shall be performed during hours of darkness.

i. With respect to each docking and undocking, the apprentice shall, under the supervision of a docking pilot, pilot the ship to the satisfaction of a docking pilot;

3. Observe from the bridge the anchoring of 20 vessels and the raising of anchor of 20 vessels of not less than 10,000 gross tons in pilotage waters;

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;

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

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) After successfully completing the requirements of (c) above, the apprentice shall sit for an examination conducted and approved by the Commission.

(e) A passing grade on the exam shall be 70 percent on all written sections, except Rules of the Road, which shall be 90 percent. Any charts drawn by the apprentice shall be graded on a pass/fail basis.

16:64-5.5 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. Has refused to perform, or failed to perform assigned apprenticeship duties or to carry out lawful orders;
2. Has been negligent or incompetent in the performance of assigned apprenticeship duties;
3. Has failed to comply with the by-laws, rules of employment, and requirements of the apprenticeship program of the respective 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. 16:64-9.3 or 9.15;
5. Has pled guilty or nolo contendere to, or has been convicted of a crime of moral turpitude;
6. Has failed to comply with the requirements of this chapter;
7. Is incapable, for medical or any other good reason, of discharging the necessary functions and duties of a docking pilot apprentice;
8. Has engaged in conduct unbecoming a docking pilot apprentice; or
9. Has misrepresented any information on the application.

(b) Upon a finding by the Commission, based on verified information, that grounds for dismissal or suspension exist, the Commission shall order the apprentice to appear at an informal hearing pursuant to N.J.A.C. 16:64-10.5.

16:64-5.6 Certification and licensure of docking pilot apprentices

(a) After a docking pilot apprentice has completed all the requirements of the docking pilot apprenticeship, the 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. 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, 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 a docking pilot apprentice, it shall give the reasons for declining the license, in writing, to the docking pilot apprentice.

16:64-5.7 (Reserved)

SUBCHAPTER 6. DOCKING PILOTS

16:64-6.1 Licensing and oaths of docking pilots

(a) Any person meeting the criteria specified in N.J.S.A. 12:8-49 and who submitted a complete application in the time provided for therein shall, unless the Commission for good cause determines otherwise, be issued a docking pilot license.

(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. 16:64-5 before being considered by the Commission for such licensing.

(c) A docking pilot shall pay an initial licensing fee of \$ 500.00, and an annual license fee of \$ 250.00. This fee shall be used by the Commission to cover the costs of administration. The annual fee shall be due every year on the anniversary date of the docking pilot's initial licensing.

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.

16:64-6.3 (Reserved)

16:64-6.4 (Reserved)

16:64-6.5 (Reserved)

16:64-6.6 (Reserved)

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.

16:64-7.2 General license requirements

(a) No person may operate as a 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 with first class pilot endorsement 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. 16:64-7.7;
4. Has submitted to the Commission evidence of the successful completion of required medical examinations; and
5. Has a valid Transportation Worker Identification Credential (TWIC) issued by the U.S. Department of Homeland Security.

(b) All pilots shall appear before the Commission every year at the Commission meeting following the anniversary date of the pilot's 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. The total number of vessels piloted;
 - ii. The number of days absent from duty due to illness;
 - iii. The routes for which the pilot holds endorsements; and
 - iv. Any activities, outside of piloting, related to the maritime industry that the pilot is or was involved in;
2. Copies of the results of the medical examinations set forth at N.J.A.C. 16:64-7.4; and
3. Such additional information as may be required of an individual pilot from time to time by the Commission.

16:64-7.3 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. Tidal and current conditions;
2. Status of aids to navigation;
3. Weather conditions; and
4. Obstructions, traffic conditions, and changes since the pilot's last trip over the route.

(b) In the event a pilot has been absent from the performance of pilotage duties within the areas subject to the Commission's jurisdiction or it is anticipated that the pilot will be absent for a period of time in excess of 30 continuous days the pilot shall notify the Commission 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 within the areas subject to the Commission's jurisdiction for more than 30 continuous days shall not resume pilotage duties until authorized to do so by the Commission. To receive authorization to resume pilotage duties a pilot shall submit a written certification on a form provided by the Commission that the pilot is fully conversant with the conditions in (a) above. The Commission may, also require the pilot to appear before the Commission for an informal hearing prior to resumption of pilotage duties and may 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 returning to duty.

(d) A pilot shall perform a minimum of 26 trips as pilot of record or as an observer in any given six-month period. The six-month period shall be calculated by the pilot on the last day of any given month, for the preceding six months. In the event the pilot shall fall below this minimum number of required trips, the pilot shall cease piloting and promptly notify the Commission in writing. Prior to resuming piloting duties, the pilot shall submit a written certification to the Commission that the pilot is fully conversant with the conditions in (a) above. The pilot may, pursuant to the procedures in N.J.A.C. 16:64-10.5, be required to appear before the Commission and/or be required to complete a specified number of observation trips prior to returning to duty.

16:64-7.4 Medical examination

(a) Every pilot and apprentice shall be examined at least annually and after any absence exceeding 30 consecutive days for any medical reason for:

1. General health;
2. Hearing equivalent to that required of a holder of a First Class Federal Pilot's license;
3. Visual acuity of at least 20/20 (correctable) in each eye; and
4. Color perception as specified at N.J.A.C. 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 on forms that have been approved by the Commission at the time of the examination. The pilot or apprentice 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 or apprentice 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 affect the pilot or apprentice's ability to perform his or her duties. A new form shall be required every time a pilot or apprentice changes medications or changes the medication dosage and/or frequency.

(c) The pilot or apprentice shall be 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 and the pilot or apprentice.

(d) If a physician reports that the pilot or apprentice is not fit to perform the duties of a pilot or apprentice, the Commission shall order the pilot or apprentice to appear, pursuant to N.J.A.C. 10.5, and take one of the following actions:

1. Suspend or revoke the pilot's license, pursuant to N.J.A.C. 16:64-10.4, or apprenticeship pursuant to N.J.A.C. 16:64-2.5 or N.J.A.C. 16:64-5.5;
2. Issue an Order that imposes conditions or limitations on the pilot's license; and/or
3. Require additional examinations.

(e) Until directed otherwise by the Commission a pilot or apprentice shall not engage in pilotage activities if:

1. The pilot or apprentice has not completed the requirements in subsections (a), (b), (c) or (f) of this section; or
2. If a physician informs the pilot or apprentice that he or she is not competent to perform the duties of a pilot or apprentice.

(f) A pilot shall annually provide the Commission with copies of the medical examination form the pilot is required to submit to the U.S. Coast Guard. In addition, the pilot shall provide the Commission copies of 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, limitations, or conditions granted by the Coast Guard.

16:64-7.5 Retirement and age-related requirements

(a) All pilots over the age of 65 shall obtain and submit two physical examinations each year, as specified in N.J.A.C. 16:64-7.4. 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.

16:64-7.6 Illness

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

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

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

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

1. Submit to an examination, at the Commission's expense, by a Commission selected physician;
2. Complete the observation trips as set forth in N.J.A.C. 16:64-7.3(c); and/or
3. Appear before the Commission.

16:64-7.7 Recurrent training

(a) All 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 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 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.

(c) The Commission shall approve or reject the plan. In the event the Commission rejects the plan, it shall advise the Pilots' Association and/or the Independent Pilots' Association of needed changes required for the Commission to approve the plan. The 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) To the extent possible, plans shall provide for coordinated training among the parties in interest.

16:64-7.8 (Reserved)

16:64-7.9 (Reserved)

16:64-7.10 (Reserved)

16:64-7.11 (Reserved)

16:64-7.12 (Reserved)

16:64-7.13 (Reserved)

16:64-7.14 (Reserved)

16:64-7.15 (Reserved)

16:64-7.16 (Reserved)

SUBCHAPTER 8. DUTIES OF PILOTAGE

16:64-8.1 Scope

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

16:64-8.2 Piloting duties

(a) A pilot shall, in a timely fashion, provide pilotage services to all regulated vessels. 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 shall be available for duty and accept pilotage assignments in accordance with a rotation schedule established by the Association.

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

(d) Whenever requested by the master, the pilot shall dock or undock a vessel.

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

(g) All pilots shall comply with the Rules of the Road as defined in N.J.A.C. 16:64-1.3.

(h) Except in circumstances which prevent their use, maritime pilots shall use a carry-on device which includes electronic charts coupled with a differential global positioning system and which displays the vessel's position and track while the maritime pilot is piloting a vessel or is on the bridge of a vessel being piloted by a docking pilot.

(i) The devices referred to in (h) above shall record the track of the vessel while it is being piloted. In the event the vessel is involved in an occurrence, the maritime pilot shall preserve the recording until the Commission authorizes its disposition.

(j) All pilots shall wear a Safety Of Life At Sea (SOLAS) or U.S. Coast Guard approved Type I, II, III or V personal floatation device (PFD) when transferring between vessels or between a vessel and land and in such other situations as conditions dictate. All pilots shall equip the PFD with a strobe light, a marine grade lift ring (or harness) and a whistle. It is recommended that all pilots boarding ships at sea, especially south of the Verrazano Narrows Bridge also be equipped with a satellite or other type Man Overboard (MOB) locator beacon. The pilots shall, at a minimum, maintain the equipment in accordance with the manufacturer's recommendations.

16:64-8.3 Master-pilot conference and unsafe passages

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

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

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

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

1. The status of the vessel's navigation equipment;
2. The status and characteristics of the vessel's engine and steering equipment;
3. The vessel's handling characteristics;
4. The vessel's compliance with Federal and International regulations, statutes and Captain of the Port's orders;
5. The drafts of the vessel; and
6. The location and currency of wheel house posters.

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

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

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

1. Immediately report the situation, and the circumstances that caused the pilot's belief that the vessel's intended voyage cannot be conducted safely to The United States Coast Guard, Captain of the Port, using the most expeditious means available, including VHF, cell phone or land line; and as soon as practical thereafter to the Commission President; and
2. Advise the master that the pilot shall remain on the bridge as an observer only and not engage in pilotage operations. However, if the pilot, while acting as an observer, notes the vessel is falling into danger, the pilot shall advise the master of the danger and give the master such advice, to the extent the pilot is able, as the master may require in a cooperative effort to extricate the vessel from the impending danger.

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

16:64-8.4 Occurrences

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

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

(d) The Pilots' Association and/or Independent 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. 16:64-10. Fines shall continue to be doubled for each subsequent offense.

16:64-8.5 (Reserved)

16:64-8.6 (Reserved)

16:64-8.7 (Reserved)

16:64-8.8 (Reserved)

16:64-8.9 (Reserved)

16:64-8.10 (Reserved)

16:64-8.11 (Reserved)

16:64-8.12 (Reserved)

16:64-8.13 (Reserved)

16:64-8.14 (Reserved)

SUBCHAPTER 9. WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS AND DRUG-FREE WORKSHOP PROGRAM

16:64-9.1 Scope

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

(b) This subchapter prohibits the use or possession of dangerous drugs by a licensed pilot or registered apprentice whether on duty, subject to being called on duty or off duty.

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

16:64-9.2 Definitions

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

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

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

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

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

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of criminal drug statutes or driving under the influence in violation of a motor vehicle statute.

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

"Dangerous drug" means a narcotic drug, controlled substance, and/or marijuana as defined in 21 U.S.C. § 802.

"Fails a chemical drug test for dangerous drugs" means that the result of a chemical test conducted pursuant to this chapter is reported as positive by a Medical Review Officer because the chemical test indicated the presence of a dangerous drug or drug metabolite.

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

"Medical Review Officer" or "MRO" means a person who is a licensed physician 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.

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

"Pass or passes a chemical drug test" means the result of a chemical test is reported as "negative" for the presence of dangerous drugs or drug metabolites by a Medical Review Officer.

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

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

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

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

16:64-9.3 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. 16:64-9.4;

2. Consume alcohol on duty or subject to being called on duty, or during an eight hour period prior to being on duty or subject to being called on duty;

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

4. Fail to cooperate with any aspect of the specimen collection or chemical drug testing program; or

5. Violate any provision of this subchapter.

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

16:64-9.4 Use of prescribed dangerous drugs

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

1. The drugs are specifically prescribed by a physician; and

2. The drug is being used at the prescribed dosage; and

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

(b) Prior to use of the 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.

16:64-9.5 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. Provide complete, valid, undiluted, and unadulterated breath, urine, or blood samples as requested;

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

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

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

(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 pilot shall not perform any duties following his or her failure to comply or cooperate with collection.

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

16:64-9.6 Pre-registration testing

(a) The Commission shall not 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 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.

16:64-9.7 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) The program shall include a random selection element so that every member of the population of pilots and apprentices has an equal chance of selection on a statistically valid basis. The testing frequency and selection process shall be such that the chance of selection continues to exist throughout a pilot's membership or an apprentice's employment. Therefore, pilots or apprentices randomly selected shall remain in the pool of persons subject to testing even after the individual has been tested.

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

(d) The 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.

16:64-9.8 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 licensed pilots.

(c) Any pilot or apprentice who entertains a reasonable belief, as set forth in (b) above, shall immediately notify the President or his or her designee of the Pilots' Association and the Independent Pilots' Association. The President or 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. Includes the facts upon which the reasonable belief is based, including the specific, contemporaneous physical, behavioral, or performance indicators of probable use of dangerous drugs or alcohol;

2. Is signed by the licensed pilots in (c) above and the President or his or her designee of the Pilots' Association and the Independent Pilots' Association; and

3. Is submitted to the Commission within 72 hours of the administering of the chemical drug test.

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

16:64-9.9 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.

(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 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;

(c) The President of the Pilots' Association or the Independent Pilots' Association, or his or her designee shall ensure the pilot and apprentice involved in an occurrence resulting in one or more of the threshold events in (b) above undergoes:

1. A chemical drug test for dangerous drugs 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.

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

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.

16:64-9.11 Alcohol testing procedures

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

(b) The 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. 16:64-9.16.

(c) The testing by and maintenance of all testing equipment units shall be conducted according to the manufacturer's instructions included with each unit.

(d) A test of a 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. 16:64-9.16.

(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 above or at 0.04 percent.

16:64-9.12 Verification by the Medical Review Officer

(a) The Pilots' Association and the Independent Pilots' Association shall designate a Medical Review Officer (MRO). 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) If the MRO determines that the test is false-positive or if the MRO determines that the test results are scientifically insufficient for further action, the test shall be reported as negative.

(d) The MRO shall immediately report all verified positive test results and indicate the dangerous drugs and/or alcohol for which there was a verified positive test to the President of the Pilots' Association or the Independent Pilots' Association or his or her designee.

(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.

16:64-9.13 Protection of records

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

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

to the 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. The context of a hearing before the Commission arising from a verified positive chemical drug test;

2. A lawsuit, grievance, or other proceeding arising from a verified positive chemical drug test; or

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

(d) The laboratory and the MRO shall disclose information related to a positive chemical drug test of an individual only to the individual, the 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) Any pilot or apprentice who is the subject of a chemical drug test conducted under this subchapter shall, upon written request, have access to any records relating to his or her chemical drug test.

16:64-9.14 Notice requirements

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

1. Any Federal or state criminal drug statute;

2. Any United States Coast Guard regulation pertaining to the uses or possession of drugs or alcohol; or

3. Any boating or motor vehicle statute or regulation for operating under the influence, refusal to take a required drug or alcohol test or operating while intoxicated.

(b) Any pilot or apprentice who refuses to take a test or tests positive for dangerous drugs or alcohol in a test required by any Federal or state statute or regulation shall be required to submit to a chemical drug test at the pilot's or apprentice's expense within 48 hours of such positive test and to be subject to increased, unannounced chemical drug testing for dangerous drugs and/or alcohol at the pilot's or apprentice's expense for a period as determined by the Commission.

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

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

16:64-9.15 Penalties

(a) Any pilot or apprentice who violates either of the prohibitions in N.J.A.C. 16:64-9.3(a)2 or 3 shall not engage in pilotage operations pursuant to N.J.A.C. 16:64-10.4(b).

(b) The Commission may, after the opportunity for an informal hearing pursuant to N.J.A.C. 16:64-10.5:

1. For the first offense:

i. Order the pilot to forfeit the pilotage fee for the pilotage operations performed while intoxicated; and/or

ii. Limit, suspend for at least one year, or revoke the pilot's license; and/or

iii. Order the pilot to pay a penalty of up to \$5,000

2. For the second offense, shall revoke the pilot's license and may also impose any of the penalties available for a first offense, except for suspension.

(c) Any apprentice who violates either of the prohibitions in N.J.A.C. 16:64-9.3(a)2 or 3 shall not engage in pilotage operations and may, after opportunity for an informal hearing pursuant to N.J.A.C. 16:64-10.5, 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 convicted a second time under any state's statute for operating while under the influence or while intoxicated; or who violates any other provision of this subchapter shall immediately be suspended from engaging in pilotage operations pursuant to N.J.A.C. 16:64-10.4(b), and may, after opportunity for an informal hearing pursuant to N.J.A.C. 16:64-10.5.

(e) Any pilot or apprentice who is prohibited from engaging in pilotage operations pending a hearing before the Commission and whose license is not suspended or revoked shall be returned to normal duties following the hearing.

(f) Any pilot or apprentice who is suspended from duty pursuant to this section must pass a chemical drug test for dangerous drugs and alcohol prior to reinstatement. The specific date of such test shall be unannounced but shall occur within the month prior to reinstatement. Notice of the specific date of such test shall be provided only so far as is necessary to ensure the individual's presence at the time and place set for testing. In addition, the pilot or apprentice shall be subject to increased, unannounced chemical drug testing for dangerous drugs and/or alcohol at the pilot's or apprentice's expense for a period as determined by the Commission not to exceed three years.

(g) Any pilot or apprentice convicted of operating a motor vehicle while intoxicated or under the influence or for refusal to take a required drug or alcohol test under the law of New Jersey or the equivalent laws of another State, shall be subject to the penalties listed in paragraph (b) above.

16:64-9.16 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) The agreement(s) or contract(s) in (a) above shall provide that the testing facility and MRO:

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

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

(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 10. PENALTIES, ORDERS, AND HEARINGS

16:64-10.1 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.

16:64-10.2 Investigations and penalties

(a) The Commission or a designated Commissioner(s) may conduct an investigation of any occurrence or any matter where there is a potential violation of this chapter or the Act.

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

(c) 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 for the first offence committed by any pilot or apprentice for any violation of any provision of this chapter. Fines for subsequent offences may be up to \$ 5,000.

(d) The Commission may also issue such cautionary letters or letters of reprimand to pilots for violation of any provision of this chapter, order pilots or apprentices to undergo additional training and impose increased monthly reporting of pilotage responsibilities.

16:64-10.3 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. The requirement to cease a specified activity or take a specified action;
2. The requirement to submit an oral statement or written report;
3. The requirement to provide written documents, log books, photographs, data, recorded material or other objects;
4. The requirement to appear at a meeting of the Commission;
5. The requirement to appear before the Commission at an informal hearing conducted pursuant to N.J.A.C. 16:64-10.5; and
6. The requirement to immediately cease engagement in pilotage operations pursuant to N.J.A.C. 16:64-10.4(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.

(c) By resolution approved by a majority of all Commissioners, the Commission may delegate authority to the Executive Director to act on behalf of the Commission to administer any or all non-disciplinary agency actions.

1. The Commission may allow these actions to be taken informally without the notice and hearing provisions of N.J.A.C. 16:64-10.5;
2. Any pilot may appeal the decision of the Executive Director by requesting an informal hearing pursuant to N.J.A.C. 16:64-10.5 within ten days of the Executive Director's action;
3. For the purposes of such an appeal the Executive Director's action shall be treated as a proposed action in applying N.J.A.C. 16:64-10.5; and
4. After receiving the request for an informal hearing, the hearing shall be scheduled no sooner than 5 days but no later than the next regularly scheduled meeting.

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

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

1. The pilot has violated N.J.S.A. 12:8-1 et seq., this chapter, or any Order issued by the Commission;
2. The pilot has negligently lost any vessel under his or her care;
3. The pilot has a mental or physical condition that precludes proper piloting;
4. The pilot has failed to comply with the Rules of the Road;
5. The pilot has failed to comply with the United States Coast Guard Vessel Traffic Service Regulations or directives;
6. The pilot meets any of the grounds in N.J.A.C. 16:64-9.3 or 9.15;
7. The pilot has failed to perform his or her piloting duties as a prudent pilot would under the prevailing circumstances; or
8. The pilot has intentionally and/or materially misrepresented or failed to provide a relevant fact to the Commission.

(b) Where the Commission's President or President designee, finds that a pilot or apprentice cannot safely perform the duties of a pilot because of the pilot's or apprentice's mental health or use of alcohol or a controlled dangerous substance, he or she may issue an Order immediately prohibiting the pilot or apprentice from engaging in pilotage operations for a period of up to 30 days. Such an Order shall include the Commission's grounds for its action and shall direct the pilot to appear at an informal hearing, in accordance with N.J.A.C. 16:64-10.5.

(c) Before a pilot's license is limited, suspended, or revoked, unless it is temporarily suspended pursuant to (b) above, the Commission shall direct the pilot to appear at an informal hearing, conducted pursuant to N.J.A.C. 16:64-10.5. If the license is limited, suspended, or revoked at the conclusion of the informal hearing, the pilot shall have a right to request a formal hearing, pursuant to N.J.A.C. 16:6-10.6.

(d) After a license is limited, suspended, or revoked, the Commission may request that the pilot surrender his or her license. Should the pilot fail to surrender 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.

16:64-10.5 Informal hearing

(a) The Commission may issue an order to a pilot or apprentice to appear and show cause as to why the Commission should decline to enter a proposed order.

(b) A written notice of the order to show cause will include the following information:

1. The date, time, and place where the pilot or apprentice is required to appear;
2. The action proposed to be ordered;
3. Where appropriate, the Commission's grounds for the order or proposed action;
4. Where appropriate, notice that the pilot or apprentice has the right to challenge the Commission's proposed action;
5. The date the proposed action will become effective; and

6. A statement that failure to appear by the pilot or apprentice may result in entry of the proposed action.

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

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

(d) The informal hearing shall not be conducted in accordance with the 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 present information, produce documents and/or witnesses, and bring an attorney or other representative pursuant to New Jersey Court Rule R. 1:21-1(e).

(e) The Commission shall give due consideration of the information documents and issues presented. The Commission, by a majority vote of the Commissioners present, will then either enter, amend or decline to enter the proposed order. The Commission may also continue the informal hearing at a later date.

(f) If a pilot is authorized by this Chapter to request a formal hearing or is entitled to a formal hearing the order issued at the conclusion of an informal hearing shall provide notice that the pilot has 30 days from receipt of the Commission's order to request a formal hearing, pursuant to N.J.A.C. 16:64-10.6. If the 30 day period should end without submission to the Commission of a written request for a formal hearing by the pilot or if the pilot is not entitled to request a formal hearing, the order will be considered a final agency decision for the purposes of the "Administrative Procedures Act," P.L. 1968, c 410 (N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq.).

(g) Any pilot or apprentice, with the consent of the Commission, may waive the 15-day notice requirement or give consent to immediate entry of a proposed order without an informal hearing. Consent may be given by either a verbal statement during a public meeting or written notification provided to the Commission's office.

16:64-10.6 Formal hearings

(a) Any person authorized to request 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 order. The request for a hearing shall include:

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

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

(c) Where the Commission determines that the matter constitutes a contested case, 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 a formal hearing, the following process shall be used:

1. The hearing shall be conducted in accordance with the hearing procedures set forth in N.J.A.C. 1:1; and

2. After reviewing the issues presented, the Commission shall issue a final agency decision in accordance with N.J.S.A. 52:14B-1 et seq.

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