

Jobs Impact

The Department does not anticipate that the proposed amendments would result in either the generation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments would impose no reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined within the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Rather, as to both small and large businesses, the proposed amendments would provide needed clarification regarding the Department’s wage and hour enforcement policy relative to overtime premium pay requirements for tipped employees.

Housing Affordability Impact Analysis

The proposed amendments would have no effect on the affordability of housing and would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendments pertain to the overtime premium pay requirements for tipped employees. The proposed amendments do not pertain in any way to housing.

Smart Growth Development Impact Analysis

The proposed amendments would have no impact on smart growth and would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments pertain to the overtime premium pay requirements for tipped employees. The proposed amendments do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of the proposal follows (additions indicated in boldface thus):

SUBCHAPTER 6. OVERTIME

12:56-6.7 Offsets; cash payments

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

(c) For the purpose of determining overtime premium pay for a tipped employee, any tips received by the tipped employee in excess of the difference between the State minimum hourly wage set forth at N.J.A.C. 12:56-3.1(a) and the cash wage paid to such employee, need not be included in the calculation of the regular hourly wage.

(d) For the purpose of use in this section, the term “tipped employee” shall mean any employee engaged in an occupation in which that individual customarily and regularly receives more than \$30.00 per month in tips.

(e) For the purpose of use in this section, the term “tip” shall mean a sum presented by a customer as a gift or gratuity in recognition of some service performed for him or her. A tip is to be distinguished from payment of a charge, if any, made for the service. Only tips actually received by an employee as money belonging to the employee may be counted in determining whether the person is a “tipped employee” for the purpose of calculating premium overtime pay.

1. In addition to cash sums presented by customers that an employee keeps as his or her own, tips received by an employee include amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bill as tips. Special gifts in forms other than money or its equivalent as above described, such as theater tickets, passes, or merchandise, are not counted as tips received by the employee in determining whether the person is a “tipped employee” for the purpose of calculating premium overtime pay.

TRANSPORTATION

(a)

NEW JERSEY MARITIME PILOT AND DOCKING PILOT COMMISSION

Rules of the New Jersey Maritime Pilot and Docking Pilot Commission

Proposed Readoption with Amendments: N.J.A.C. 16:64

Authorized By: New Jersey Maritime Pilot and Docking Pilot Commission, Honorable Timothy J. Dacey, President.

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

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

Proposal Number: PRN 2016-173.

Submit written comments by January 20, 2017, to:

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The agency proposal follows:

Summary

Pursuant to the requirements of Executive Order No. 66 (1978) and N.J.S.A 52:14B-5.1, the New Jersey Maritime Pilot and Docking Pilot Commission (Commission) proposes to readopt with amendments the current Commission rules found at N.J.A.C. 16:64, which would otherwise expire on November 10, 2016. As the Commission submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to May 9, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2).

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

These rules, which were initially adopted in 1993, were subsequently readopted in 1998, 2004, and 2009. See 30 N.J.R. 1810(a), 36 N.J.R. 4305(a), and 41 N.J.R. 2884(a). Substantial amendments to the rules, including their recodification at N.J.A.C. 16:64 took place in 2004 pursuant to P.L. 2004, c. 72. This statutory amendment moved the Commission from an “in, but not of” agency of the Department of Environment Protection to the Department of Transportation. Additional amendments in 2005 and 2006, added new provisions for the regulation of docking pilots and apprentices. An amendment in 2008, provided for the recurrent training of all pilots. Amendments made in 2011, provided for an addition to the route currency regulations. Lastly, substantial amendments were made in 2014, to fix errors; correct regulatory citations; consolidate language to eliminate duplication and inconsistencies; combine certain requirements applicable to both Docking Pilots and Maritime Pilots into one section; and incorporate current Commission directives and policies. All amendments are authorized by P.L. 2004, c. 72.

In compliance with Executive Order No. 66 (1978), the Commission has reviewed the current chapter and has determined that it remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated, that is, for the better governance and regulation of maritime and docking pilots. As a result of this review, the Commission also proposes amendments to the rules to improve sections of them, correct grammatical errors, and align them with current practices.

The following summarizes the current rules and the proposed amendments:

Subchapter 1 contains general provisions.

N.J.A.C. 16:64-1.1 states the purpose and scope of the rules.

N.J.A.C. 16:64-1.2 is the construction, severability, and waiver section.

N.J.A.C. 16:64-1.3 contains the chapter's definitions. An amendment is proposed to the term "deputy pilot" to include a second grade pilot for clarification.

N.J.A.C. 16:64-1.4 contains the incorporation by reference section.

N.J.A.C. 16:64-1.5 contains operational procedures for the Commission.

N.J.A.C. 16:64-1.6 contains the requirement for a ship to utilize the services of a licensed pilot.

N.J.A.C. 16:64-1.7 sets forth the fees for pilotage service. Amendments are proposed in this section to delete the table and references for intermediate intra-harbor rates, since they are not set via regulation and are always the same as those charged in New York.

N.J.A.C. 16:64-1.8 sets forth the penalty for failure to take a pilot.

Subchapter 2 contains Maritime Pilot Apprentice rules.

N.J.A.C. 16:64-2.1 states the scope of the subchapter.

N.J.A.C. 16:64-2.2 discusses the availability and number of apprentices.

N.J.A.C. 16:64-2.3 discusses the qualifications for maritime pilot apprentices.

N.J.A.C. 16:64-2.4 sets forth the requirements a maritime pilot apprentice must complete prior to sitting for the licensing exam.

N.J.A.C. 16:64-2.5 sets forth criteria for the suspension or dismissal of apprentices. Amendments are proposed to clarify the procedures the Commission must follow in taking any action to dismiss or suspend an apprentice. Specifically, it allows for the Commission to order a pilot to appear before it to respond.

N.J.A.C. 16:64-2.6 provides for the certification that the maritime pilot apprentice has completed all requirements of the apprenticeship.

N.J.A.C. 16:64-2.7 provides for the examination of apprentices by the Commission.

Subchapter 3 pertains to Maritime Pilot licensing.

N.J.A.C. 16:64-3.1 gives the scope of the subchapter.

N.J.A.C. 16:64-3.2 states the issuance of a deputy pilot license.

N.J.A.C. 16:64-3.3 sets forth the oath pilots are required to take after passing their examination.

N.J.A.C. 16:64-3.4 states the route extensions for maritime pilots.

N.J.A.C. 16:64-3.5 sets forth the grades of licenses for maritime pilots.

N.J.A.C. 16:64-3.6 sets forth the process to suspend or reduce the grade or routes covered in a maritime pilot's license. Amendments are proposed to clarify the procedures the Commission must follow in taking any action and options available to the pilot to appeal the Commission's action. Specifically, it allows for the Commission to order a pilot to appear and sets forth procedures for a pilot to request a formal hearing.

N.J.A.C. 16:64-3.7 sets forth the procedure for a maritime pilot to have a license grade increased.

N.J.A.C. 16:64-3.8 through 3.12 remain reserved.

Subchapter 4 discusses Pilot Boats and Stations, and is proposed for readoption without change.

Subchapter 5 discusses the Docking Pilot apprentice rules.

N.J.A.C. 16:64-5.1 gives the scope of the subchapter.

N.J.A.C. 16:64-5.2 sets forth the availability and number of apprentices. Amendments are proposed to change the number of docking pilots on the Selection Committee from two to three, since current practice is to have one representative from each association.

N.J.A.C. 16:64-5.3 states the qualifications for docking pilot apprentices. Amendments are proposed to include the Commission's Physician Certification form. The form has always been a part of the process and the amendment is proposed to match current practice.

N.J.A.C. 16:64-5.4 sets forth the requirements a docking pilot apprentice must complete prior to sitting for the licensing exam.

N.J.A.C. 16:64-5.5 sets forth the criteria for the suspension or dismissal of docking pilot apprentices. Amendments are proposed to clarify the procedures the Commission must follow in taking any action to suspend or dismiss an apprentice. Specifically, it allows for the Commission to order an apprentice to appear.

N.J.A.C. 16:64-5.6 provides for the certification that the docking pilot apprentice has completed all requirements of the apprenticeship.

N.J.A.C. 16:64-5.7 remains reserved.

Subchapter 6 pertains to docking pilot licensing, and is proposed for readoption without change.

Subchapter 7 states general license requirements for maritime and docking pilots.

N.J.A.C. 16:64-7.1 gives the scope of the subchapter.

N.J.A.C. 16:64-7.2 concerns general license requirements for maritime pilots and docking pilots.

N.J.A.C. 16:64-7.3 sets forth route currency requirements. Amendments are proposed to clarify the term "pilotage duty," to clarify that a pilot needs Commission approval before returning to work after 30 days of absence, including illness and injury, from pilotage duties, and lastly, to clarify procedures the Commission must follow in taking action and the options available to the pilot to appeal the Commission action as set forth in N.J.A.C. 16:64-10.5. Specifically, the amendments require Commission approval for pilots to return after 30 day absences, including from illness or injury, which reflects current practices.

N.J.A.C. 16:64-7.4 sets forth medical requirements. Amendments are proposed to state that this section applies to both pilots and apprentices. This section also allows for the Commission to order a pilot to appear upon receiving a not fit for duty report and specifies that a pilot cannot return to duty upon suspension without Commission approval.

N.J.A.C. 16:64-7.5 sets age-related requirements for pilots.

N.J.A.C. 16:64-7.6 states a pilot's obligation in the event they experience an illness that prevents them from piloting for more than 30 consecutive days.

N.J.A.C. 16:64-7.7 concerns a pilot's obligation to maintain up-to-date on all routes they may pilot on.

N.J.A.C. 16:64-7.8 through 7.16 remain reserved.

Subchapter 8 discusses general duties for maritime and docking pilots.

N.J.A.C. 16:64-8.1 gives the scope of the subchapter.

N.J.A.C. 16:64-8.2 states the duties of maritime and docking pilots.

N.J.A.C. 16:64-8.3 is the master-pilot conference and unsafe passage section. Amendments are proposed to state that this section applies to both maritime and docking pilots. Amendments are also proposed to delete a redundancy and combine the requirement to notify the Coast Guard and Vessel Traffic Service, since they are the same entity.

N.J.A.C. 16:64-8.4 pertains to a pilot's obligation to make reports in the event of an occurrence.

N.J.A.C. 16:64-8.5 through 8.14 remain reserved.

Subchapter 9 discusses the drug and alcohol testing programs and the drug-free workshop program.

N.J.A.C. 16:64-9.1 gives the scope of the subchapter.

N.J.A.C. 16:64-9.2 gives the definitions for the section. An amendment is proposed to correct the term "Medical Review Office" to "Medical Review Officer".

N.J.A.C. 16:64-9.3 is the prohibitions section.

N.J.A.C. 16:64-9.4 is the use of prescribed dangerous drugs section.

N.J.A.C. 16:64-9.5 is the implied consent section.

N.J.A.C. 16:64-9.6 is the pre-registration testing section.

N.J.A.C. 16:64-9.7 is the random testing section.

N.J.A.C. 16:64-9.8 is the reasonable belief testing section.

N.J.A.C. 16:64-9.9 is the post-occurrence testing section.

N.J.A.C. 16:64-9.10 is the drug testing procedure section.

N.J.A.C. 16:64-9.11 is the alcohol testing procedure section.

N.J.A.C. 16:64-9.12 is the verification by Medical Review Officer section.

N.J.A.C. 16:64-9.13 is the protection of records section.

N.J.A.C. 16:64-9.14 sets forth the pilots or apprentices notice requirements.

N.J.A.C. 16:64-9.15 is the penalties section. A number of amendments are proposed for this section. The amendments are to clarify what actions the Commission can take in the event that a pilot is found to violate this subchapter. These actions include, for the first offense, ordering a pilot to appear, limiting or suspending a pilot's license, or the complete revocation of a pilot's license. For the second offense it allows for the revocation and any penalties outlined for the first offense.

N.J.A.C. 16:64-9.16 sets forth the responsibilities of the Associations under this subchapter.

Subchapter 10 is the penalty, orders, and hearings subchapter.

N.J.A.C. 16:64-10.1 states the scope of the subchapter.

N.J.A.C. 16:64-10.2 is the investigations and penalties section. Amendments are proposed to clarify measures the Commission may take if a pilot is found to violate the subchapter.

N.J.A.C. 16:64-10.3 is the orders of the Commission section. An amendment is proposed to state that the Commission may delegate the authority to administer non-disciplinary actions to its Executive Director and the procedures a pilot may take if they wish to appeal the action.

N.J.A.C. 16:64-10.4 is the suspension, limitation, or revocation section. Several amendments are proposed in this section. The amendments are proposed to clarify procedures the Commission must follow in taking action against a pilot and the options available to the pilot to appeal the Commission action. The amendments also clarify that this section is applicable to apprentice pilots. Specifically, the amendments allow for an order that immediately suspends a pilot's license for 30 days. The order shall also include the date and time of an informal hearing. The hearing allows the pilot to present information to the Commission. It also provides for the pilot to request a formal hearing, if the suspension or revocation is upheld at the conclusion of the informal hearing.

N.J.A.C. 16:64-10.5 is the informal hearing section. Several amendments are proposed. The amendments are to clarify the grounds for an informal hearing. These grounds include the order to show cause order from the Commission, which must include the action proposed, the proposed date the action becomes effective, and a statement informing the pilot that failure to appear may result in the entry of the proposed action. Additionally, the amendments allow for the pilot or apprentice to present information or documents. At the conclusion of the informal hearing, a majority vote of the Commission may enter or decline the proposed order. It also gives the Commission the right to continue the hearing at a later date. This section also allows the pilot a 30-day period to request a formal hearing. Lastly, it provides for the pilot or apprentice to waive notice requirements and give consent to the immediate entry of the proposed order.

N.J.A.C. 16:64-10.6 is the formal hearings section. Minor amendments are proposed in this section to change "Commission action" to "Commission order" and for grammatical reasons.

Social Impact

The rules proposed for readoption with amendments primarily affect the licensed pilots and their affiliated organization. These rules provide for the selection, training, oversight, and disciplining of Maritime and Docking pilots as provided for under N.J.S.A. 12:8-1 et seq. The proposed amendments will improve upon the disciplinary section by providing the regulated community a clearly defined review and appeal process, therefore, a minor positive impact is anticipated. As per the provisions set forth in N.J.S.A. 12:8-1 et seq., the rate tables were deleted as they are not set via regulation and continue to be the same as those charged by pilots licensed in the State of New York.

Economic Impact

The rules proposed for readoption with amendments will have a minor economic impact only on pilots and apprentices required to comply with them. While there are costs associated with proper training, education, and testing for drugs and alcohol, these rules will have a net positive economic impact by reducing the likelihood of maritime accidents and the resulting damage to the economy. As per provisions set forth in N.J.S.A. 12:8-1 et seq., the rate tables were deleted as they were not set via regulation and continue to be the same as those charged by pilots licensed in the State of New York. Additionally, the new rules allow for a pilot to be represented by counsel, at their own expense, which would present economic impact on the individual pilot.

Federal Standards Statement

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

While the regulation of pilots working in navigable waters of the United States is clearly a regulation of commerce within the powers of Congress, there is a concurrent system of state pilotage regulation. States

have jurisdiction over foreign vessels and vessels sailing under register. Federally licensed pilots are, in general, required to be used on coastwise (domestic trade) vessels that are "enrolled," but not sailing under register, 46 U.S.C. § 8502. States may regulate pilotage on foreign vessels and U.S. vessels operating on register in the bays, rivers, harbors, and ports of the United States (46 U.S.C. § 8501). Thus, New Jersey pilotage laws and rules are controlling in situations regulated by this chapter. N.J.A.C. 16:64-9 (drug free workplace) includes drug and alcohol testing requirements that were patterned after and are equivalent to Federal testing standards. Given that these rules are equivalent to the Federal standards codified at 46 CFR Parts 16 and 19, no analysis is required.

Accordingly, the rules proposed for readoption with amendments do not contain any standards or requirements which exceed the standards or requirements imposed by Federal law and no further analysis is required.

Jobs Impact

The Commission does not anticipate that any jobs will be generated or lost as a result of the rules proposed for readoption with amendments.

Agriculture Industry Impact

The rules proposed for readoption with amendments have no impact on the agriculture industry. The rules are not intended to regulate farming, crop, or animal production.

Regulator Flexibility Analysis

A regulatory flexibility analysis is not required since the rules proposed for readoption with amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Only individual persons, not businesses, may be licensed as maritime and docking pilots. However, in the event individual pilots may be deemed "small businesses within the meaning of the Act," the following analysis would be applicable. The rules proposed for readoption with amendments will not impose any new or additional reporting, recordkeeping, or compliances on small businesses. The rules require pilots to maintain logs, file reports, make annual appearances, and report occurrences. The rules also impose drug and alcohol testing requirements upon individual pilots, which are consistent with existing Federal requirements. The Commission has determined not to provide any exemptions or lesser requirements on small businesses because the potential relief that may be afforded by such an exemption does not outweigh the Commission's obligation to protect public health and safety.

Housing Affordability Impact Analysis

The Commission believes that the rules proposed for readoption with amendments would not have an impact on housing affordability nor would they evoke a change in the average costs associated with housing because the rules relate only to the selection, training, licensure, oversight, and disciplining of maritime and docking pilots as provided for in N.J.S.A. 12:8-1 et seq.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth because there is an extreme unlikelihood the rules would evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules relate only to the selection, training, licensure, oversight, and disciplining of maritime and docking pilots as provided for in N.J.S.A. 12:8-1 et seq.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:64.

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

SUBCHAPTER 1. GENERAL PROVISIONS

16:64-1.3 Definitions

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

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

...

16:64-1.7 Fees for maritime pilotage

(a) (No change.)

(b) Fees for maritime pilotage are as follows:

1.-2. (No change.)

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

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

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

i. For transporting vessels between points, indicated in the second table above on the right, the fee shall be \$ 2.50 per pilotage unit, with a minimum charge of \$ 500.00, and a maximum charge of \$ 1,000.

ii. Every foreign vessel and every American vessel under register entering or departing from the Port of New York by the way of Sandy Hook or by the way of Sands Point or Execution Rocks making more than 10 port calls per month, shall receive a discount of 50 percent of the

charges set forth for each port call in excess of 10. This discount is to be calculated for each calendar month.

iii. "Pilotage units" as used in this paragraph shall be determined by multiplying the overall length of the vessel by the extreme breadth by the depth to the uppermost continuous deck and dividing the total by 10,000, as expressed by the following:

$$\frac{\text{Overall Length} \times \text{Extreme Breadth} \times \text{Depth to the Uppermost Continuous Deck}}{10,000} = \text{Pilotage Units}$$

(1) All measurements shall be in feet and inches (U.S.).

(2) The measurement of overall length, extreme breadth and depth shall be made available to the pilot by the master or the agent for the purpose of computation of pilotage fees.

(3) Failure to provide the measurements so required shall subject the vessel to maximum pilotage tariff.

iv. "Pilotage tariff" as used in this paragraph shall be the same as fees determined by (b)1 above] **the same as those charged by Maritime Pilots licensed by the State of New York.**

SUBCHAPTER 2. MARITIME PILOT APPRENTICESHIP

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

(a) (No change.)

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

SUBCHAPTER 3. MARITIME PILOT LICENSING

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

(a) (No change.)

(b) Upon [receipt by the Commission of information] **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** [shall be notified of his or her right to request a formal hearing in accordance with] **to appear at an informal hearing pursuant to N.J.A.C. 16:64-[10.6]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.

SUBCHAPTER 5. 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 [two] **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/maritime_pilot/ 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) (No change.)

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

1.-11. (No change.)

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[.]; and

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) (No change.)

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

(a) (No change.)

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

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

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

(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.

SUBCHAPTER 7. GENERAL LICENSE REQUIREMENTS

16:64-7.3 Route currency

(a) (No change.)

(b) In the event a pilot has been absent from the performance of pilotage [duty] **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, [for reasons other than illness or injury,] 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[, prior to resuming piloting activities,] **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 [to the Commission] **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 [piloting] **pilotage** duties [and/or] **and** may[, at its discretion,] condition the pilot's return to duty upon the completion of a specified number of observation trips over the routes the pilot will be piloting upon 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.-4. (No change.)

(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[']s **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 [health of a] pilot **or apprentice** is [deficient] **not fit to perform the duties of a pilot or apprentice**, the Commission [may, at its discretion] **shall order the pilot or apprentice to appear, pursuant to N.J.A.C. 16:64-10.5, and may take one of the following actions:**

1. Suspend or revoke [an existing] **the pilot's or apprentice's** license, **pursuant to N.J.A.C. 16:64-10.4**, or apprenticeship pursuant to N.J.A.C. 16:64-[10.4]2.5 or 5.5;

2.-3. (No change.)

(e) [A] **Until directed otherwise by the Commission, a pilot or apprentice** shall not [be permitted to pilot a vessel] **engage in pilotage activities** if: [the]

1. **The pilot or apprentice** has not [successfully completed the annual medical examination required in (a) above or examinations as may be required in (c) above.] **completed the requirements in (a), (b), or (c) above or (f) below; 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) (No change.)

SUBCHAPTER 8. DUTIES OF PILOTAGE

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

(a)-(d) (No change.)

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

1. Immediately report the situation, and the circumstances that caused the [docking] pilot's belief that the vessel's intended voyage cannot be conducted safely[,] to[: i.] The United States Coast Guard, Captain of the Port, [by way of the] **using the most expeditious means available, including Vessel Traffic Service, VHF, cell phone or land line[:]; and** [ii.The Vessel Traffic Service, or their successors, on the most appropriate sector frequency, cell phone or by land line; and iii. As] **as soon as practical thereafter to the [President of the] Commission President; and**

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

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

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

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:

...

"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 [Office] **Officer** because the chemical test indicated the presence of a dangerous drug or drug metabolite.

...

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 [immediately be suspended from engaging] **not engage** in pilotage operations pursuant to N.J.A.C. 16:64-10.4(b).

(b) The Commission may, after the opportunity for [a formal] **an informal hearing** pursuant to N.J.A.C. 16:64-[10.6]10.5:

1. For the first offense [order the pilot to,]:

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

[ii. Be suspended, without pay, for at least one year;

iii. The Commission may, based upon the circumstances of the offense, suspend or revoke the license of any pilot deemed to have violated this subchapter; and]

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

[iv.] iii. [Pay] **Order the pilot to pay** a penalty of up to \$5,000[: and].

2. For the second offense, [have his or her license revoked] **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 [immediately be prohibited from engaging] **not engage** in pilotage operations and may, after opportunity for an informal hearing pursuant to N.J.A.C. 16:64-[2.5]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 [second conviction] **convicted a second time** under any state's statute for operating while under the influence or [operating] while intoxicated; or who violates any other provision of this subchapter shall immediately be suspended from engaging in pilotage operations **pursuant to N.J.A.C. 16:64-10.4(b)**, and may, after opportunity for [a formal] **an informal hearing** pursuant to N.J.A.C. 16:64-[10.4(c) (for

pilots) or 2.5 (for apprentices), have his or her license/registration permanently revoked unless there are extenuating circumstances, which, in the discretion of the Commission, justify only the suspension of his or her license/registration]10.5.

(e) Any pilot or apprentice who [was] is prohibited from engaging in pilotage operations pending a hearing before the Commission and [who, following the hearing is not suspended or who does not have his or her license/registration revoked] **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 [(a), (b) and/or (c) above] **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 [whose motor vehicle license is suspended due to a conviction of driving] **convicted of operating a motor vehicle** while intoxicated or [driving] 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 [such discipline as the Commission deems appropriate including, but not limited to, suspension of the pilot's license, under the totality of the circumstances. In the event of a second conviction, the penalties specified in (b)2 above shall be enforced] **the penalties listed in (b) above**.

SUBCHAPTER 10. PENALTIES, ORDERS, AND HEARINGS

16:64-10.2 Investigations and penalties

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

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

16:64-10.3 Orders of the Commission

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

(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 10 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 five 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 suspend, limit, or revoke the license [and/or the branch] of a pilot for any one of the following grounds:

1.-8. (No change.)

(b) Where the [Commission deems it necessary, it] **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 or physical 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 [from engaging in pilotage operations]. Such an Order shall include the Commission's grounds for its action and shall [permit the pilot, at the pilot's discretion, to request an] **direct the pilot to appear at an informal hearing, in**

accordance with N.J.A.C. 16:64-10.5], within a reasonable time of the date of the Order, or request a formal hearing, in accordance with N.J.A.C. 16:64-10.6, as soon as same can be scheduled].

(c) Before a pilot's license is limited, suspended, or revoked, unless it is [done so] **temporarily suspended** pursuant to (b) above, the Commission shall [issue an Order of limitation, suspension, or revocation that includes the Commission's grounds for the action, the effective date of the action, and an opportunity for the pilot to request an informal hearing.] **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. 16:64-10.6.**

(d) After a [branch or] 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, in the form of a written notice, requiring the] **order to a pilot or apprentice to appear [before the Commission at an informal hearing] and show cause as to why the Commission should decline to enter a proposed order.**

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

1. (No change.)

2. The action proposed to be ordered;

[2.] **3. Where appropriate, the Commission's grounds for [its] the order or proposed action; [and]**

[3.] **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) (No change.)

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

1. The Commission may administer an oath and the Commission, by and through the Commissioners, may examine any person;]

[2.] **(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 [testify] **present information**, produce [evidence] **documents**, and/or witnesses, **and** bring an attorney or other representative pursuant to New Jersey Court Rule R. 1:21-1(e)[, and cross-examine any witnesses].

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

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of the Commission's [action] **order**. The request for a hearing shall include:

1. The date the Commission's [action] **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)-(d) (No change.)

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