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Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXX. River Pilots
Subpart 1. Board of Examiners of Bar Pilots for the Port of New Orleans

Chapter 1. General Provisions

§101. Authority

A. As mandated by R.S. 34:945.C.1, these rules and regulations are issued by the Board of Examiners of Bar Pilots for the Port of New Orleans in accordance with the Administrative Procedure Act under R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements for holding examinations for all applicants who have registered with them for the posts of bar pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:350 (March 2003), amended LR 29:2057 (October 2003).

§102. Purpose

A. The purposes of these rules and regulations are as follows:

1. to establish standards for recommendation by the Board of Examiners of Bar Pilots for the Port of New Orleans to the governor of the state of Louisiana for appointment as bar pilots who, pursuant to R.S. 34:941 et seq., have the duty to pilot sea-going vessels into and out of the entrances of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waterways of the Gulf of Mexico.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:350 (March 2003), amended LR 29:2057 (October 2003).

§103. Definitions

A. The following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Administrative Procedure Act—the Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

Application—the written application supplied by the board of examiners to an applicant who desires to become a bar pilot for the Port of New Orleans.

Bar Pilot or *Pilot*—a bar pilot for the Port of New Orleans as designated in R.S. 34:943.

Board of Examiners or *Board*—the Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:942.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003), amended LR 29:2057 (October 2003).

§104. Severability

A. If any provision of these rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003), amended LR 29:2058 (October 2003).

§105. Effective Date

A. These rules and regulations shall be in full force and effective 90 days after final publication in the *Louisiana Register*. All bar pilots and bar pilot candidates shall be provided with a copy of these rules and regulations as well as any amendments, after the rules and regulations are adopted by the board of examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003), amended LR 29:2058 (October 2003).

§106. Qualifications of Pilots

A. No person shall be recommended to the governor for appointment as a pilot unless the applicant:

1. is a qualified elector of the state of Louisiana;

2. has served at least 12 months next preceding the date of his application in a pilot boat at the mouth of the Mississippi River or other entrances into the Gulf of Mexico or other outside waters from the Port of New Orleans;

3. has successfully passed the examination given by the board of examiners, as required by R.S. 34:948;

4. owns or has made a binding legal agreement to acquire as owner or part owner of at least one decked pilot boat of not less than 50 tons burden, which is used and employed exclusively as a pilot boat, as required by R.S. 34:930;

5. is a high school graduate or, in lieu thereof, holds a third mate's license;

6. has served at least one year at sea on a sea-going vessel of not less than 1,600 gross tons in the deck department;

7. has successfully passed a physical examination which in the judgment of the board of examiners includes those standards, such as vision, color perception and hearing tests, to perform duties as a bar pilot;

8. is of good moral character; and

9. shall have completed satisfactorily an apprenticeship program which culminates in a cubbing period of not less than nine months duration handling vessels over the routes of the bar pilots under the supervision of not less than 25 licensed state bar pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003), amended LR 29:2058 (October 2003).

§107. Minimum Requirements

A. The board of examiners shall review, and if found satisfactory, approve the apprenticeship program of the applicant, the minimum requirements of which shall be as follows: the applicant must set forth in detail the names of the vessels handled, dates handled, the direction of travel, size, draft, and type of vessel, and the name of the supervising bar pilot. During the period of apprenticeship the applicant shall handle vessels on not less than 650 occasions, two-thirds of which shall be at night.

B. The board of examiners will review the number and times of vessels handled, the size, draft, and type of vessels and the conditions under which the applicant has performed the apprenticeship in order to determine if the applicant has had sufficient exposure as to enable the board of examiners to make a determination of the applicant's competence and ability to perform the duties of a bar pilot.

C. The board of examiners shall prescribe the form of the application and required documentary proof of the applicant's eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003), amended LR 29:2058 (October 2003).

§108. Bond

A. No person shall assume the position of bar pilot until he shall have first taken the oath prescribed by law and has furnished a bond in favor of the governor in the amount of $2,000 conditioned on the faithful performance of his duties imposed upon him as a bar pilot. This bond shall be approved by the board of commissioners of the Port of New Orleans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003), amended LR 29:2058 (October 2003).

§109. Compulsory Retirement

A. A state commissioned bar pilot for the Port of New Orleans shall be required to retire on or before the date of his/her sixty-eighth birthday. It shall be the pilot's responsibility to insure that his/her pension begins in a timely fashion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:2058 (October 2003).

Chapter 3. Pilots

Subchapter A. General Provisions

§301. Authority

A. As mandated by R.S. 34:945.C.l, these rules and regulations are issued in accordance with the Administrative Procedure Act under R.S. 49:950 et seq., for the purpose of establishing minimum standards of conduct for bar pilots and for the proper and safe pilotage of sea-going vessels into and out of the entrance of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with outside waters of the Gulf of Mexico, including the entrance of the New Orleans Tidewater Channel at the western shore of the Chandeleur Sound off Point Chicot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003), amended LR 29:2058 (October 2003).

§302. Purpose

A. The purposes of these rules and regulations are as follows:

1. to establish certain minimum standards of conduct, including conduct relative to neglect of duty, drunkenness, carelessness, habitual intemperance, substance abuse, incompetency, unreasonable absence from duty, and general bad conduct of bar pilots;

2. to provide a uniform set of rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways referred to in §101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:352 (March 2003), amended LR 29:2059 (October 2003).

§303. Definitions

A. The following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Administrative Procedure Act—the Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

Bar Pilot or *Pilot*—a bar pilot for the Port of New Orleans, as designated in RS. 34:943.

Board of Examiners or *Board*—the Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:942.

Services of a Bar Pilot—any advice or assistance with respect to pilotage by the commissioned bar pilot or by his authorized representative, including but not limited to advice concerning weather, channel conditions, or other navigational conditions.

Waterways—the entrance into and out of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waters of the Gulf of Mexico, including the entrance of the New Orleans Tidewater Channel at the western shore of the Chandeleur sound off Point Chicot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:352 (March 2003), amended LR 29:2059 (October 2003).

§304. Investigations and Enforcement

A. All complaints reported to the board shall be considered for investigation. A complaint under the provisions of §304.A-F is defined as:

1. any written complaint involving a bar pilot commissioned for the Port of New Orleans;

2 any reported incident involving a bar pilot commissioned for the Port of New Orleans while piloting a vessel; or

3. any other event involving a bar pilot commissioned for the Port of New Orleans that, in the discretion of any member of the board, justifies further investigation.

B. The board may appoint an investigating officer to investigate the complaint and report to the board.

C. If the board, or its designated investigating officer, is of the opinion that the complaint, if true, is sufficient to justify a further investigation, it shall appoint an investigating officer, or authorize its designated investigating officer to conduct a full investigation of the complaint.

D. Once authorized under §304.C, the investigating officer, who may be an active or retired member of the Associated Branch Pilots of the Port of New Orleans, Louisiana, and who may be a member of the board, shall make a full and complete investigation of the complaint. He shall be assisted by an attorney, named as independent prosecutor by the board. In the event that the investigating officer, as contemplated by either §304.B or §304.C, is an active member of the board, he shall be recused from any participation in the decision of the case.

E. If the investigating officer is of the opinion that the conduct in question is not sufficient to justify further proceedings, he shall make a reasoned report to the board, which may accept or reject his recommendation.

F. If the investigating officer is of the opinion that the conduct complained of is sufficient to justify further proceedings and the board has accepted his recommendations, or if the board has rejected his recommendation to dismiss the complaint, he shall give notice to the respondent, by registered mail, of the facts or conduct on which the complaint is based, and offer the respondent an opportunity to show compliance with the laws or regulations allegedly violated. If, in the opinion of the investigating officer, the respondent is able to demonstrate such compliance, then the investigating officer shall make a report to the board, recommending to the board that the complaint be dismissed. The board may accept or reject the recommendation of the investigating officer.

G. If the respondent is unable to demonstrate such compliance, or if the board rejects the recommendation of the investigating officer to dismiss the complaint, the investigating officer shall initiate proceedings by filing a written administrative complaint with the board, which shall be signed by the investigating officer.

H. The administrative complaint shall name the accused bar pilot as respondent in the proceedings. It shall also set forth, in separately numbered Paragraphs, the following:

1. a concise statement of material facts and matters alleged and to be proven by the investigating officer, including the facts giving rise to the board's jurisdiction over the respondent;

2. the facts constituting legal cause under law for administrative action against the respondent;

3. the statutory or regulatory provisions alleged to have been violated by respondent.

I. The administrative complaint shall conclude with a request for the administrative sanction sought by the investigating officer, and shall state the name, address, and telephone number of administrative complaint counsel engaged by the board to present the case at the evidentiary hearing before the board.

J. The board may either accept or reject the administrative complaint.

K. If it rejects the administrative complaint, the case may be either dismissed or referred back to the investigating officer for further investigation.

L. If the board accepts the administrative complaint, the board shall docket the administrative complaint and schedule the administrative complaint for hearing before the board not less than 45 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the investigating officer or respondent pursuant to a showing of proper grounds. In the event the respondent's commission as a bar pilot for the port of New Orleans has been suspended by the board pending hearing, the evidentiary hearing on the administrative complaint shall be noticed and

scheduled not more than 45 days after the filing of the administrative complaint.

M. A written notice of the administrative complaint and the time, date and place of the scheduled hearing thereon shall be served upon the respondent by registered, return receipt requested mail, as well as by regular first class mail, at the most current address for the respondent reflected in the official records of the board, or by personal delivery of the administrative complaint to the respondent. The notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held, and shall be accompanied by a certified copy of the administrative complaint.

N. The case shall be prosecuted by the independent prosecutor, also referred to as administrative complaint counsel, who shall handle the case to its conclusion. He shall be entirely independent of the authority of the board in going forward with the matter, and may conduct such further investigation, and prepare and try the case in such manner as he may deem appropriate.

O. Within 15 days of service of the administrative complaint, or such longer time as the board, on motion of the respondent, may permit, the respondent may answer the administrative complaint, admitting or denying each of the separate allegations of fact and law set forth therein. Any matters admitted by respondent shall be deemed proven and established for purposes of adjudication. In the event that the respondent does not file a response to the administrative complaint, all matters asserted therein shall be deemed denied.

P. Any respondent may be represented in an adjudication proceeding before the board by an attorney at law duly admitted to practice in the state of Louisiana. Upon receipt of service of an administrative complaint pursuant to these rules, or thereafter, a respondent who is represented by legal counsel with respect to the proceeding shall, personally or through such counsel, give written notice to the board of the name, address, and telephone number of such counsel. Following receipt of proper notice of such representation, all further notices, administrative complaints, subpoenas or other process related to the proceeding shall be served on respondent through his or her designated counsel of record.

Q. All pleadings, motions or other papers permitted or required to be filed with the board in connection with a pending adjudication proceeding shall be filed by personal delivery at or by mail to the office of the board and shall by the same method of delivery be concurrently served upon administrative complaint counsel designated by the administrative complaint, if filed by or on behalf of the respondent, or upon respondent, through counsel of record, if any, if filed by administrative complaint counsel.

1. All such pleadings, motions or other papers shall be submitted on plain white letter-size (8 1/2" x 11") bond, with margins of at least 1 inch on all sides, and double spaced except as to quotations and other matters customarily single spaced, shall bear the caption and docket number of the case as it appears on the administrative complaint, and shall include the certificate of the attorney or person making the filing that service of a copy of the same has been effected in the manner prescribed by Subsection A of this Section.

2. The board may refuse to accept for filing any pleading, motion or other paper not conforming to the requirements of this Section.

R. Motions for continuance of hearing, for dismissal of the proceeding and all other pre-hearing motions shall be filed not later than 30 days following service of the administrative complaint on the respondent or 15 days prior to the hearing, whichever is earlier. Each pre-hearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefor. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion. Within 10 days of the filing of any such motion and memorandum or such shorter time as the board may order, the investigating officer, through administrative complaint counsel, may file a memorandum in opposition to or otherwise setting forth the investigating officer's position with respect to the motion.

S.1. A motion for continuance of hearing shall be filed within the delay prescribed by §304.R of these rules, provided that the board may accept the filing of a motion for continuance at any time prior to hearing upon a showing of good cause not discoverable within the time otherwise provided for the filing of pre-hearing motions.

2. A scheduled hearing may be continued by the board only upon a showing by respondent or administrative complaint counsel that there are substantial legitimate grounds that the hearing should be continued, balancing the right of the respondent to a reasonable opportunity to prepare and present a defense to the complaint and the board's responsibility to protect the public health, welfare and safety. Except in extraordinary circumstances evidenced by verified motion or accompanying affidavit, the board will not ordinarily grant a motion to continue a hearing that has been previously continued upon motion of the same party.

3. If an initial motion for continuance is not opposed, it may be granted by the presiding office.

T.1. Any pre-hearing motion, other than an unopposed initial motion for continuance of hearing which may be granted by the chairman of the board, shall be referred for decision to the board member designated by the board as the presiding officer of the board designated with respect to the proceeding for ruling. The presiding officer, who shall be a member of the board designated as presiding officer by the board in each matter before the board, in his discretion, may refer any pre-hearing motion to the board for disposition, and any party aggrieved by the decision of a presiding officer on a pre-hearing motion may request that the motion be reconsidered by the entire panel.

2. Pre-hearing motions shall ordinarily be ruled upon by the presiding officer or the board, as the case may be, on the papers filed, without hearing. On the written request of respondent or of administrative complaint counsel, however,

and on demonstration that there are good grounds therefor, the presiding officer may grant opportunity for hearing by oral argument, on any pre-hearing motion.

U.1. Upon request of the respondent or administrative complaint counsel and compliance with the requirements of this section, any board member shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

2. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

V.1. In any case of adjudication noticed and docketed for hearing, counsel for respondent and administrative complaint counsel may agree, or the presiding officer may require, that a pre-hearing conference be held among such counsel, or together with the board's independent counsel appointed pursuant to §304.W hereof, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

2. Following such pre-hearing conference the parties shall, and without such conference the parties may by agreement, agree in writing on a pre-hearing stipulation which should include:

a. a brief statement by administrative complaint counsel as to what such counsel expects the evidence to be presented against respondent to show;

b. a brief statement by respondent as to what the evidence and arguments in defense are expected to show;

c. a list of the witnesses to be called by administrative complaint counsel and by respondent, together with a brief general statement of the nature of the testimony each such witness is expected to give;

d. any stipulations which the parties may be able to agree upon concerning undisputed claims, facts, testimony, documents or issues; and

e. an estimate of the time required for the hearing.

W.1. Unless otherwise requested by the respondent, adjudication hearings, being the hearing conducted on the merits of the administrative complaint, shall be conducted in closed session.

2. At an adjudication hearing, opportunity shall be afforded to administrative complaint counsel and respondent to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the administrative complaint.

3. Unless stipulation is made between the parties and approved by the board, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings.

4. During evidentiary hearing, the presiding officer shall rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire panel in executive session. At any such hearing, the board may be assisted by legal counsel retained by the board for such purpose, who is independent of administrative complaint counsel and who has not participated in the investigation or prosecution of the case. If the board or panel is attended by such counsel, the presiding officer may delegate to such counsel ruling on evidentiary objections and other procedural issues raised during the hearing.

5. The record in a case of adjudication shall include:

a. the administrative complaint and notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery, and all pleadings, motions, and intermediate rulings;

b. evidence received or considered at the hearing;

c. a statement of matters officially noticed except matter so obvious that statement of them would serve no useful purpose;

d. offers of proof, objections, and rulings thereon;

e. proposed findings and exceptions, if any;

f. the decision, opinion, report or other disposition of the case made by the board.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

X.1. In an adjudication hearing, the board may give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Effect shall be given to the rules of privilege recognized by law. The board or panel may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

2. All evidence, including records and documents in the possession of the board which administrative complaint counsel desires the board to consider, shall be offered and made a part of the record, and all such documentary

evidence may be received in the form of copies or excerpts or by incorporation by reference, the materials so incorporated shall be available for examination by the respondent before being received in evidence.

3. Notice may be taken of judicially cognizable facts and generally recognized technical or scientific facts within the board's knowledge. Parties shall be notified either before or during the hearing of the material noticed or sought by a party to be noticed, and they shall be afforded an opportunity to contest the material so noticed. The board's experience, technical competence and knowledge may be utilized in the evaluation of the evidence.

4. Any member of the board serving as presiding officer in an adjudication hearing shall have the power to and shall administer oaths or affirmations to all witnesses appearing to give testimony, shall regulate the course of the hearing, set the time and place of continued hearings, fix the time for the filing of briefs and other documents, if they are required or requested, and may direct the parties to appear and confer to consider simplification of the issues.

5. Except as otherwise governed by the provision of these rules, adjudication hearings before the board shall be governed by the Louisiana Code of Evidence, insofar as the same may be applied.

Y. The board may make informal disposition, by default, consent order, agreement, settlement or otherwise of any adjudication pending before it. A consent order shall be considered by the board only upon the recommendation of the investigating officer.

Z.1. The final decision of the board in an adjudication proceeding shall, if adverse to the respondent, and otherwise may be, in writing, shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on behalf and in the name of the board.

2. Upon issuance of a final decision, a certified copy thereof shall promptly be served upon respondent's counsel of record, or upon respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of administrative complaints.

AA.1. A decision by the board in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the board pursuant to written motion filed with the board within 10 days from service of the decision on respondent or on its own motion. A motion for rehearing, reopening, or reconsideration shall be made and served in the form and manner prescribed by §304.Q and shall set forth the grounds upon which such motion is based, as provided by Subsection B of this Section.

2. The board may grant rehearing, reopening, or reconsideration if it is shown that:

a. the decision is clearly contrary to the law and the evidence;

b. the respondent has discovered since the hearing evidence important to the issues which he or she could not have with due diligence obtained before or during the hearing;

c. other issues not previously considered ought to be examined in order properly to dispose of the matter; or

d. there exists other good grounds for further consideration of the issues and the evidence in the public interest.

BB. Pursuant to R.S. 34:945(C)(3), the board of examiners shall have the authority to impose a fine of not more than $500 on any bar pilot, to reprimand or remove from a vessel any bar pilot, or to recommend to the governor that the commission of any bar pilot be suspended or revoked, if after a hearing conducted in accordance with these rules and regulations and the Administrative Procedure Act a bar pilot is found in violation of any rule or regulation adopted by the board of examiners.

CC. The authority established in these rules is in addition to and in no way limits the authority of the board to seek to remove or to remove a pilot from a vessel pursuant to the provisions of R.S. 34: 947 and RS. 49:961(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:352 (March 2003), amended LR 29:2059 (October 2003).

§305. Severability

A. If any provision of these rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:355 (March 2003), amended LR 29:2062 (October 2003).

§306. Effective Date

A. These rules and regulations shall be in full force and effective 90 days after final publication in the *Louisiana Register.* All bar pilots and bar pilot candidates shall be provided with a copy of these rules and regulations, as well as any amendments, after the rules and regulations are adopted by the board of examiners.

AUTHORITY NOTE: Promulgated in accordance with R. S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:355 (March 2003), amended LR 29:2062 (October 2003).

Chapter 4. Standards of Conduct: Proper and Safe Pilotage

§401. Adoption of Inland Navigational Rules

A. For those waters on which the Inland rules apply within the jurisdiction of the bar pilots, the board of examiners has adopted, by reference and in its entirety, the

Inland Navigational Rules at 33 U.S.C. Section 2001 et seq. The board of examiners also adopted the navigation safety standards set forth in Title 33 CFR Part 164(p). All bar pilots and bar pilot applicants shall be subject to these Inland Navigational rules and safety standards as adopted herein by reference.

Title 33 CFR Part 164(p)

(p) The person directing the movement of the vessel sets the vessel's speed with consideration for:

(1) The prevailing visibility and weather conditions;

(2) The proximity of the vessel to fixed shore and marine structures;

(3) The tendency of the vessel underway to squat and suffer impairment of maneuverability when there is small underkeel clearance;

(4) The comparative proportions of the vessel and the channel;

(5) The density of marine traffic;

(6) The damage that might be caused by the vessel's wake;

(7) The strength and direction of the current; and

(8) Any local vessel speed limit;

NOTE: These rules CFR 110.195 and 161.402 have not been adopted but should be reviewed by all pilots and applicants.

Title 33 CFR 110.195

(a) The Anchorage Grounds. Unless otherwise specified, all anchorage widths are measured from the average low water plane (ALWP).

(1) Pilottown Anchorage. An area 5.2 miles in length along the right descending bank of the river from mile 1.5 to mile 6.7 above Head of Passes, extending in width to 1600 feet from the left descending bank of the river.

Title 33 CFR 161.402

(c) Navigation of South and Southwest Passes.

(1) No vessel, except small craft and towboats and tugs without tows, shall enter either South Pass or southwest Pass from the Gulf until after any descending vessel which has approached within two and one-half (2 1/2) miles of the outer end of the jetties and visible to the ascending vessel shall have passed to sea.

(2) No vessel having a speed of less than 10 mph shall enter South Pass from the Gulf when the state of the Mississippi River exceeds 15 feet on the Carrollton Gage at New Orleans. This paragraph does not apply when Southwest Pass is closed to navigation.

(3) No vessel, except small craft and towboats and tugs without tows, ascending South Pass shall pass Franks Crossing Light until after a descending vessel shall have passed Depot Point Light.

(4) No vessel, except small craft and towboats and tugs without tows, shall enter the channel at the head of South Pass until after an ascending vessel which has reached Franks Crossing Light shall have passed through into the river.

(5) When navigating South Pass during periods of darkness no tow shall consist of more than one towed vessel other than small craft, and during daylight hours no tow shall consist of more than two towed vessels other than small craft. Tows may be in any formation, When towing on a hawser, the hawser shall be as short as practicable to provide full control at all times.

(6) When towing in Southwest Pass during periods of darkness no tow shall consist of more than two towed vessels other than small craft, and during daylight hours no tow shall consist of more than three towed vessels other than small craft.

AUTHORITY NOTE: Promulgated in accordance with R. S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:355 (March 2003), amended LR 29:2062 (October 2003).

§402. Ships Required to Take Pilots

A. All ships and vessels inward or outward bound throughout the entrances of the Mississippi River or other inland waterway connecting the Port of New Orleans with the Gulf of Mexico, or other outside waters, except those of 100 tons or less lawfully engaged in the coasting trade of the United States, shall take a bar pilot when one is offered; and any ship or vessel refusing or failing to take a pilot shall be liable to the pilot thus offering for pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003), amended LR 29:2063 (October 2003).

§403. Pilots' Duty of Remain on Board Ship until Crossing Bar

A. When boarding an outward bound ship or vessel at the boarding stations bar pilots shall remain on board the ship until she crosses the bar, unless permission is given by the master for the pilot to absent himself from the ship or vessel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003), amended LR 29:2063 (October 2003).

§404. Acting as Pilot without License; Penalty

A. No person who is not commissioned a bar pilot shall board any ship or vessel required to take a bar pilot, for the purpose of piloting, or to pilot or attempt to pilot the same; and no person or pilot shall board any such ship or vessel for the purpose of piloting, except from the pilot boats on the bar pilot stations. Whoever violates the provisions of this Section shall be fined not less than $1,500 nor more than $5,000, or may be imprisoned for not more than six months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003), amended LR 29:2063 (October 2003).

§405. Pilot's Duty to Exhibit License

A. Whoever offers to pilot a ship or other vessel shall, if required, exhibit to the commander thereof this identification card as a bar pilot, attested to by the chairman of the board of examiners; and if he refuses or neglects to do so, he shall not be entitled to any remuneration for any service he may render as pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003), amended LR 29:2063 (October 2003).

§406. Employing Pilot without Licenses; Liability of Vessel, Master or Owner

A. When a vessel, inward or outward bound to or from the Port of New Orleans employs as a pilot a person who is not a state commissioned bar pilot, when a bar pilot offers his services, the vessel, her captain and owners, shall be liable for a civil penalty of and shall forfeit to the state of Louisiana the sum of $15,000 with privilege on the vessel, to be recovered before any court of competent jurisdiction. An action for forfeiture under this Section may be brought by the attorney general of Louisiana or by the Associated Branch Pilots of the Port of New Orleans. If the Associated Branch Pilots of the Port of New Orleans obtains a judgment hereunder, the court shall include in its judgment a reasonable attorney's fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003), amended LR 29:2063 (October 2003).

§407. Employing Pilot without a State Commission; Penalties

A. No master, owner, or agent of a vessel required under R.S. 34:953 to take a state commissioned bar pilot shall, when a state commissioned bar pilot offers his services, employ as a pilot a person who is not a state commissioned bar pilot.

B. Whoever violated this Section shall be subject to a fine of not less than $1,500 nor more than $5,000, or imprisoned for not more than 6 months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003), amended LR 29:2063 (October 2003).

§408. Offering of Services

A. As used in this Subpart, reference to the offering of a bar pilot or the offering of services by a bar pilot shall mean any offering of any advice or assistance with respect to pilotage by the commissioned bar pilot or by his authorized representative, including but not limited to advice concerning weather, channel conditions, and other navigational conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003), amended LR 29:2063 (October 2003).

§409. Prohibition of Interest of Members of Board of Commissioners of Port of New Orleans, in Pilot Boat or Pilotage

A. The members of the board of commissioners of the Port of New Orleans shall not be interested, directly or indirectly, in any bar pilot boat or pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003), amended LR 29:2064 (October 2003).

§410. Report by Pilot

A. In any case where a vessel being piloted by a bar pilot shall go aground, or shall collide with any object, or shall meet with any casualty, which causes injury to persons or damage to property, the pilot shall, as soon as possible report such incident to the board. The pilot shall also complete a written incident report form provided by the board within 24 hours after the incident.

B. The board, with or without complaint made against said pilot, shall investigate the incident.

C. The pilot shall make a complete report to the board within 10 days after the incident. This report may either be an oral or a written report as the board deems necessary.

D. These rules shall apply to any bar pilot engaged in piloting within the operating territory as defined by R.S. 34:941 et seq., whether the vessel be subject to compulsory pilotage or elective pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003), amended LR 29:2064 (October 2003).

§41l. Pilots' Duty to Report

A. Pilots, when notified, shall report in person to the board at the time and place so designated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003), amended LR 29:2064 (October 2003).

§412. Pilots Summoned to Testify

A. Any bar pilot summoned to testify before the board shall appear in accordance with such summons and shall make answer under oath to any question put to him, touching any matter connected with the pilot's service or of the pilot grounds over which he is commissioned to pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.
HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003), amended LR 29:2064 (October 2003).

Chapter 5. Drug and Alcohol Policy

§501. Application

A. The Board of Examiners of Bar Pilots for the Port of New Orleans, Louisiana (hereinafter "board") adopted the following rules and regulations relating to a drug and alcohol abuse policy applicable to all state licensed bar pilots pursuant to the provisions of R.S. 34:941 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003), amended LR 29:2064 (October 2003).

§502. Statement of Findings and Purposes

A. The board of has always had a strong commitment to the safety of the public. In order to carry out its mission, the board has established this policy regarding drug and alcohol abuse. The board's goal will continue to be one of establishing and maintaining a work environment that is free from the effects of alcohol and drug abuse.

B. While the board has no intention of intruding into the private lives of bar pilots, the board does expect bar pilots to report for work in a condition capable of performing their duties. The board recognizes that off-the-job, as well as on-the-job, involvement with alcohol and drugs can have an impact on the work place and on a bar pilot's ability to perform his duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003), amended LR 29:2064 (October 2003).

§503. Bar Pilots' Assistance Program

A. The board recognizes that the Associated Branch Pilots for the Port of New Orleans established a Bar Pilot's Assistance Program (BPAP) to provide help for any bar pilot whose personal alcohol or drug abuse problems may seriously affect his or her ability to function on the job, at home and in society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003), amended LR 29:2064 (October 2003).

§504. Definitions

A. As used in this Chapter:

Alcoholic Beverage—any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol.

Drug—all controlled dangerous substances as defined in R.S. 40:961.7. and R.S. 40:964.

Non-Prescription Medication—any medication sold or dispensed without a prescription that is not a drug as defined in drug above.

Prescription Medication—any drug as defined in §504.A.*Drug* distributed by the authorization of a licensed physician as defined in R.S. 40:961.31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:358 (March 2003), amended LR 29:2064 (October 2003).

§505. Prohibitions and Requirements of the Policy

A. A bar pilot who is under the influence of alcohol or drugs, or who possesses or uses alcohol or drugs on the job, has the potential for interfering with his own safety as well as that of the ship he is piloting and other vessels in the area, property and personnel. Consistent with existing board practices, such conditions shall be probable cause for disciplinary action up to and including recommendation for revocation of a bar pilot commission.

B.1. Off-the-job drug or alcohol abuse use that could adversely affect a bar pilot's job performance or could jeopardize the safety of others shall be proper cause for administrative or disciplinary action up to and including recommendation for revocation of a bar pilot's commission.

2. Bar pilots who are arrested for off-the-job drug or alcohol activity may be considered to be in violation of this policy. In deciding what action to take, the board will take into consideration the nature of the charges, the bar pilot's overall job performance as a pilot, and other factors relative to the impact of the bar pilot's arrest upon the conduct of bar pilotage and the safety threat posed to the public by the specific activity.

3. The abuse of non-prescription medication by a bar pilot also has the potential for interfering with his own safety as well as that of others. A bar pilot shall not abuse non-prescription medication which may impair his or her ability to perform his duties as a bar pilot. Abuse of non-prescription medication by a bar pilot which impairs his or her ability to perform his duty may subject the pilot to administrative or disciplinary action. A bar pilot shall not use non-prescription medication if it impairs his competence as a pilot in the discharge of his duties.

C.1. A bar pilot shall be free of use of any drug as defined in §504.A.*Drug*, but excluding prescription medication as defined in §504.A.*Prescription Medication*, so long as such use of prescription medication does not impair the competence of the pilot to discharge his duties.

2. Bar pilots shall report to the chairman of the board the use of any drug, as defined in §504.A.*Drug*, including prescription medication.

D. A bar pilot who voluntarily requests assistance in dealing with personal drug or alcohol abuse under the Associated Branch Pilots BPAP program may do so without the board taking action for his voluntary participation. Volunteering to participate in the BPAP will not prevent administrative or disciplinary action for a violation of this policy which has already occurred or which may occur while in the program.

E.1. Narcotics or any other controlled dangerous substance made illegal by the laws of the United States or the state of Louisiana shall not be brought aboard or caused to be brought aboard any vessel no matter by whom owned, or property owned or leased by the associated branch pilots.

2. Persons, or property, coming aboard any such vessel or property will be subject to inspection.

3. The board will cooperate fully with appropriate law enforcement agencies by reporting information with respect to the violation of laws regarding illegal substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:358 (March 2003), amended LR 29:2064 (October 2003).

§506. Drug Testing

A. Testing. All bar pilots shall be subject to testing for the presence of any drug, as defined in §504.A.*Drug*, above.

B. Types of Testing

1. All bar pilots shall submit to reasonable scientific testing for drugs when directed by the board. All procedures and activities conducted in connection with such testing shall comply with R.S. 49:1001-1015, except that certain terms contained therein are redefined because there is no employer-employee relationship. Section 1001(7) shall read "Pilot"—any person who holds a commission from the Governor of the State of Louisiana as an Associated Branch Pilot for the Port of New Orleans. The word *pilot* shall be used wherever the terms *employee* is used in §1001-1015. Section 1001(8) shall read *board* which is the Board of Examiners of Bar Pilots for the Port of New Orleans, Louisiana. The word *board* shall be used whenever the term *employer* is used in §1001-1015.

2. A bar pilot shall be required to submit a urine specimen to be tested for the presence of drugs under the following circumstances:

a. prior to recommendation for appointment, as a part of the physical exam required in these rules and regulations;

b. after recommendation, whenever the pilot is required by the board to undergo a physical examination;

c. upon written sworn complaint signed by the complainant in accordance with Chapter 6 of the rules and regulations of the board of review of bar pilots for the Port of New Orleans;

d. when the pilot is reasonably suspected of using drugs in violation of this policy;

e. at random at the discretion of the board; and

f. when the pilot is determined to be directly involved in a marine casualty or accident during the course of his activities as a pilot that results in:

i. one or more deaths;

ii. injury to any person which requires professional medical treatment beyond first aid;

iii. damage to property in excess of $100,000; or

iv. actual or constructive loss of any vessel.

C. The board may designate a testing agency to perform any scientific test(s) necessary to detect the presence of drugs or their metabolites in a pilot's system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:358 (March 2003), amended LR 29:2065 (October 2003).

§507. Alcohol Testing

A. The board of examiners may require a pilot to submit to a blood alcohol test under the following circumstances:

1. upon written complaint signed by the complainant in accordance with Chapter 6 of the rules and regulations of the board of review of bar pilots of the Port of New Orleans;

2. when there exists reasonable suspicion that a pilot is performing his duties while under the influence of alcohol; or

3. when the pilot is determined to be directly involved in a marine casualty or accident of the type described in §506.B.2.f.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003), amended LR 29:2065 (October 2003).

§508. Violations of the Policy

A. Any pilot found to be in violation of this policy may be reprimanded, fined, evaluated, and treated for violations of this policy and have his commission suspended or revoked as provided by R.S. 34:945 and 962.

B. Any bar pilot reasonably suspected of bringing on board any vessel, no matter by whom owned, or property owned or leased by the Associated Branch Pilots for the Port of New Orleans, or causing to bring on board a vessel or property owned or leased by the Associated Branch Pilots for the Port of New Orleans, any narcotic or any other controlled dangerous substance made illegal by the laws of the United States or the state of Louisiana will be subject to disciplinary action either by the board or, upon recommendation of the board, by the governor of the state of Louisiana.

C. A pilot shall be suspended from performing the duties of a pilot pending a hearing pursuant to R.S. 34:945 and 962 if:

1. he tests positive for any drug covered by §504.A.*Drug*;

2. he uses any drug in violation of §505.C;

3. he refuses to submit to reasonable scientific testing for drugs, fails to cooperate fully with the testing procedures, or intentionally tries to alter the test results;

4. he tests positive for alcohol; or

5. he refuses to submit to a blood alcohol test, fails to cooperate fully with the testing procedure, or intentionally tries to alter the test results.

D. Any pilot who is required to undergo evaluation or treatment for alcoholism or drug abuse shall do so at his own personal expense and responsibility. The physician, as well as the evaluation and treatment facility, must be approved by the board.

E. Any pilot who believes he would be in violation of these rules if he were to perform his duties as a bar pilot is obligated to remove himself from duty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003), amended LR 29:2066 (October 2003).

§509. Test Results

A. All drug test results shall be reviewed by a medical review officer in accordance with R.S. 49:1007.

B. Any pilot, confirmed positive, upon his written request, shall have the right of access, within seven working days of actual notice to him of his test results, to records relating to his drug tests and any records relating to the results of any relevant certification, review, or suspension/revocation-of-certification proceedings.

C. The results of the drug testing conducted pursuant to this policy and all information, interviews, reports, statements and memoranda relating to the drug testing shall, in accordance with R.S. 49:1012, shall be confidential and disclosed only to the board of examiners and the pilot tested, except that:

1. the board of examiners may report the results to the governor, the president of the Associated Branch Pilots for the Port of New Orleans, the United States Coast Guard; and

2. in the event that the board of examiners determines that a hearing is required pursuant to R.S. 34:947 or 962, there shall be no requirement of confidentiality in connection with such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003), amended LR 29:2066 (October 2003).

Chapter 6. Administrative Policy

§601. Application

A. The purpose of this Section is to ensure compliance by the board of examiners of bar pilots for the Port of New Orleans with the provisions of the Louisiana Public Meeting Law and the records maintenance requirements of the provisions of R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003), amended LR 29:2066 (October 2003).

§602. Meetings of Examiners

A. All meetings and notices thereof of the board of examiners shall be conducted in accordance of the Open Meetings Law (R.S. 42:4 et seq.). The board shall meet at least once each quarter and meetings shall be called in accordance with R.S. 42:7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003), amended LR 29:2066 (October 2003).

§603. Record Keeping

A. The board of examiners shall maintain records and conduct its hearings in accordance with R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by Office of the Governor, Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003), amended LR 29:2066 (October 2003).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXX. River Pilots
Subpart 2. Board of River Port Pilot Commissioners

Chapter 31. General Provisions

§3101. Mission Statement

A. The mission of the Board of River Port Pilot Commissioners for the Port of New Orleans is to protect the health and welfare of the citizens and property in the state of Louisiana. Navigation on the Mississippi River is a hazardous endeavor. Safe and efficient navigation on the Mississippi River is essential to the prosperity of the nation and the state of Louisiana.

B. State pilots are the only maritime professionals whose exclusive duty is to protect the interests of Louisiana and its citizens. Pilots must manage and mitigate risk to enhance commerce and prosperity. Pilots must balance the commercial interests with safety and the interests of the citizens and property in the state to develop and encourage commerce.

C. Acknowledging that economic interests, environmental interests, and social policy are often in conflict, the board and the pilots collaborate with public interests, professional mariners, and users of the Mississippi River to balance these conflicting interests. The goal is to promote prosperity and safety while achieving environmental and commercial viability and to continue to develop and encourage such commerce.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 47:878 (July 2021).

§3103. Definitions

A. The following terms shall have the following meaning as used in these rules.

Applicant—one who submits an application to become a river port pilot apprentice.

Apprentice—an applicant who has been selected to become a river port pilot pending successful completion of the apprenticeship program.

Apprentice Candidate—an applicant whose application has been certified by the board.

Apprentice Duties—any activity or requirement of the apprenticeship program as required by the commission.

Board—the Board of River Port Pilot Commissioners as defined in R.S. 34:991.

Commission—the appointment by the governor authorizing one to perform the duties of a river port pilot.

Commissioner—a member of the Board of River Port Pilots Commissioners for the Port of New Orleans as appointed and serving in accordance with state law.

Conviction—having been found guilty by judgment or by plea and includes cases of deferred adjudication (no contest, adjudication withheld, etc.) or where the court requires a person to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court finding. Expunged convictions must be reported unless the expungement was based upon a showing that the court's earlier conviction was in error.

Deputy Pilot—a commissioned river port pilot who is piloting subject to restrictions as set forth in these regulations

Drug—all controlled dangerous substances as defined in R.S. 40:961(7).

Marine Incident—a personal injury, loss of life, discharge of pollution, collision and/or allision, wave wash or suction resulting in an injury or damage, or hard grounding in which the vessel is damaged or needs assistance to be re-floated.

Pilot—river port pilots as defined in R.S. 34:992 or any person performing duties pursuant to a River Port Pilot Commission.

Prescription Medication—medication which can only be distributed by the authorization of a licensed physician as defined in R.S. 40:961(30).

Second Pilot—when a ship movement requires two pilots, the second pilot is to support and act as a resource to the first pilot.

Turn—a turn, for the purposes of recency only, shall be any pilotage of any vessel for 20 miles or any pilotage on a vessel that docks, undocks, anchors, un anchors or turns around in the river.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2068 (October 2003), amended LR 35:1882 (September 2009), LR 38:2369 (September 2012), LR 47:878 (July 2021).

§3105. Board of River Pilot Commissioners for the Port of New Orleans

A. The duties of the board are established pursuant to R.S. 34:991.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:1882 (September 2009), LR 47:878 (July 2021).

§3107. Application

A. Any person wishing to submit an application to become an apprentice candidate must submit a written request for an application to the board at its address or by email. The board's current address is:

Board of River Port Pilot Commissioners
c/o Application Request
2728 Athania Pky.
Metairie, LA 70002
brppc@cox.net

B. All applications to become an apprentice candidate must be in writing, must be signed by the applicant, and presented to the board. All applications must be notarized and accompanied by satisfactory evidence of compliance with the board's requirements.

C. The board will issue a notice, that it will accept applications for the subsequent calendar year for selection into the River Port Pilot Apprenticeship Program.

D. The board will accept applications for selection into the River Port Pilot Apprenticeship Program from January 1 to October 31 of each year.

E. After October 31, the board will review the applications, schedule physicals, have background checks on the applicant, and certify that the applicants meet the criteria set forth by the board. Upon request, the board may allow the applicant to submit to a physical before October 31.

F. On or about January 1 the board will prepare a list of apprentice candidates eligible to be selected. The list shall remain in place until December 31 at which time the list will be withdrawn and a new list will be prepared in accordance with these regulations.

G. Any applicant who submits an application with false or misleading information or false, misleading, forged, or altered supporting documents will have their application deemed void. The board, in its discretion, may prohibit the applicant from submitting an application in the future. Nothing in this paragraph will affect the enforcement of state and federal laws regarding the submission of false information and documents to a state board.

H. When the pilots notify the board that there is a necessity for pilots, the board will submit to the pilots the list of eligible apprentice candidates as described in §3107.F, and pursuant to RS 34:993. The pilots will select the apprentice candidates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:1882 (September 2009), LR 47:878 (July 2021).

Chapter 32. Licensing, Qualifications, and Apprenticeship

§3201. General Qualifications

A. Applicant must be of good moral character. Evidence of a clear police record will be considered, but the board reserves the right to examine other sources of information as to the applicant's character.

B. Applicant is and has been a voter of the state of Louisiana continuously for at least two years before December 31 of the year the application is submitted.

C. Applicant must not have reached the age of forty prior to the first day of balloting on apprentices by the pilots.

D. Applicant shall not have been convicted of a felony offense involving either drugs or the personal consumption of alcohol for 60 months prior to December 31st of the year the application is submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3) and R.S. 34:993.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:1883 (September 2009), LR 47:879 (July 2021).

§3203. Licensing Qualifications

A. Each applicant must meet the below listed requirements.

1. Each applicant must hold a United States Coast Guard First Class Pilot License of Steam or Motor Vessel of any gross tons for the Mississippi River from Southport to the Head of Passes and for the Inner Harbor Navigation Canal (Industrial Canal) from the Mississippi River to Lake Pontchartrain. In the event the Inner Harbor Navigation Canal is closed and or navigation on the canal is severely restricted. The board in its discretion may waive the requirement of a first class pilot license on all or part of the Inner Harbor Navigation Canal.

2. Each applicant must meet one of the following requirements:

a. a United States Coast Guard Master of Steam or Motor Vessels of less than 1600 gross registered tons or any upgrade thereof upon Inland Waters, Rivers or Lakes; or

b. a United States Coast Guard second mate's license (or any upgrade thereof) of steam or motor vessels of any gross tons upon oceans.

3. Each applicant must have held one of the licenses described in §3203.A.1, A.2.a, or A.2.b for a period of one year prior to December 31st of the year the application is submitted to become an apprentice candidate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:1883 (September 2009), LR 47:879 (July 2021).

§3205. Education Qualifications

A. In addition to the requirements described herein, the Applicant must have a bachelor's degree or diploma granted by a college or university accredited by one of the regional accreditation agencies recognized by the United States Department of Education for the accreditation of degree-granting institutions of higher education.

B. Applicants shall document the aforementioned requirements by providing the board with an official transcript of the mandatory educational requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:1833 (September 2009), LR 38:2369 (September 2012), LR 47:879 (July 2021).

§3207. Physical Qualifications

A. The applicant, when requested, must be examined by a physician, clinic, or group of physicians of the board's choosing to determine the applicant's physical condition. The examination report must reflect to the board's satisfaction that the applicant's physical condition is satisfactory and commensurate with the work and responsibilities of a pilot, and will enable the applicant to safely perform the duties of pilotage. The board shall have no responsibilities for the examinations or their results. The applicant submitting to such examinations will hold the board harmless from any responsibility for any injury or loss, including attorneys' fees and the costs of defense, incurred as a result of the examination or the reliance by the board or any others on the results of such examination.

B. The applicant, when requested, shall submit to an examination by a mental health professional or group composed of such mental health professionals of the board's choosing. The report of this examination must reflect, to the board's satisfaction, that the applicant's mental condition and aptitude is satisfactory and commensurate with the work and responsibilities of a pilot, and will enable the applicant to safely perform the duties of pilotage. The board shall have no responsibility for the examinations or their results. The applicant submitting to such examinations will hold the board harmless from any responsibility for any injury or loss, including attorneys' fees and the costs of defense, incurred as a result of the examination or the reliance by the board or any others on the results of such examination.

C. The applicants shall submit to drug and alcohol screening as directed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:1883 (September 2009), LR 38:2369 (September 2012), LR 47:879 (July 2021).

§3209. Apprenticeship

A. The apprentice must serve a minimum of 12 months of apprenticeship. The apprentice will handle deep draft vessels over the operating territory under the tutelage of not less than 50 percent of the pilots. The apprentice must perform the duties of an apprentice in a professional, courteous, and prudent fashion. At all times the apprentice must be fit for duty, free from any substance that may adversely affect the apprentice's ability to perform apprentice duties. The apprentice must set forth in detail the names of the vessels handled, dates handled, draft, tonnage, between what points so moved, and the names of the supervising pilots. No apprentice shall be permitted to be examined for commissioning who has not fulfilled the requirements set forth by the board. The apprenticeship work must be certified by the board during the apprenticeship program. The board reserves the right to substitute work requirements, require satisfactory completion of additional trips, extended the apprenticeship, or terminate the apprenticeship when deemed necessary.

B. In compliance with R.S. 34:993, the board shall hold examinations of the apprentices as to their knowledge of pilotage and their proficiency and capability to serve as pilots. These examinations shall be given in such manner and shall take such form as the board may, in its discretion from time to time, elect.

C. The board shall certify for the governor's consideration those apprentices who satisfactorily complete all requirements established by state law and these rules and who complete and pass any examinations given by the board.

D. Should the apprentice fail any examination, violate any rule or regulation of the board, fail to fulfill the duties of an apprentice or engage in any conduct or activity that is unsafe, unprofessional and/or demonstrates a lack of judgment, the board, in its discretion, may terminate the apprenticeship, or may designate additional apprenticeship requirements to be satisfied by the apprentice before the apprentice may again petition the board for examination.

E. If an apprentice fails to successfully satisfy the requirements of the apprenticeship program within 24 months as determined by the board, the apprenticeship may be terminated at the board's discretion.

F. The apprentice shall submit to drug and alcohol screening as determined by the board in its discretion.

G. The apprentice shall report to the board any change in their physical or mental condition that may, in any way, affect their performance as an apprentice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:1883 (September 2009), LR 38:2369 (September 2012), LR 47:880 (July 2021).

§3211. Age Restrictions

A. A pilot shall be required to resign their pilot commission in the calendar year the pilot attains the age of 70.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).
HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:1884 (September 2009), LR 47:880 (July 2021).

Chapter 33. Deputy Pilots

§3301. Restricted Duties Guidelines

A. The deputy pilot development program is a mandatory program administered by the board to develop pilot skill after the pilot receives a pilot commission or license.

B. The deputy pilots shall adhere to the guidelines and restrictions established by the board which may factor the following considerations:

1. length of the vessel;

2. cargo carried by the vessel;

3. draft of the vessel;

4. river stage;

5. visibility restrictions;

6. designating the deputy pilot to serve as a second pilot;

7. restrict the deputy pilot from performing certain pilot services during the deputy period;

8. any restrictions the board may seem appropriate.

C. The deputy pilot shall be subject to restrictions until the board removes the restrictions.

D. The failure of the deputy pilot to adhere to these guidelines may subject the deputy pilot to disciplinary action at the board's discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).
HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:1884 (September 2009), LR 38:2369 (September 2012), LR 47:880 (July 2021).

Chapter 34. Drug and Alcohol Policy

§3401. Drug Use

A. Pilots and apprentices shall be free of the use of any drug as defined in §3103, excluding prescription medication as defined in §3103 so long as the use of such prescription medication does not impair the physical competence of the pilot.

B. The board shall designate a testing agency or agencies to perform scientific test or tests to screen for the presence of drugs. These drug tests shall be conducted at random, post incident, and for reasonable suspicion at the discretion of the board.

C. All pilots and apprentices shall submit to scientific testing and screening for drugs when directed by the board.

D. The results of drug testing and screening shall be confidential and disclosed only to the Board and the pilot tested, except that:

1. the board may report the results to the governor, the Board of Directors of the Crescent River Port Pilot Association, and the United States Coast Guard;

2. in the event that the board determines that a hearing is required, there shall be no requirement of confidentiality in connection with the hearing.

E. Any pilot or apprentice testing positive for drugs or any residual thereof shall be suspended from performing the duties of a pilot pending a hearing.

F. Any pilot or apprentice who refuses to submit to scientific testing or screening for drugs fails to cooperate fully with the testing procedures, or in any way tries to alter the test results shall be suspended pending a hearing. Such refusal shall be considered as a positive test.

G. Any pilots found to be in violation of this Section may be reprimanded, fined, evaluated, and/or treated for drug use and/or have their commission suspended or revoked. Any apprentice found in violation of this Section is subject to immediate termination of their participation in the apprenticeship program.

H. Any pilot required to undergo an evaluation and/or treatment shall do so at their own expense and responsibility; the physician, as well as the evaluation and treatment facility must be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).
HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2071 (October 2003), amended LR 35:1884 (September 2009), LR 47:880 (July 2021).

§3403. Alcohol Use

A. No pilot shall consume any alcohol of any nature whatsoever within six hours before, or during, the performance of pilotage duties.

B. No pilots shall perform their duties when their blood alcohol content is 0.04 or greater.

C. Any pilots who believe they would be in violation of any of these rules if he were to perform their duties is obligated to remove themselves from duty. The pilot is the absolute insurer of their state of mind, physical abilities, and overall well-being.

D. The board may require a pilot to submit to a blood alcohol test upon complaint or reasonable suspicion that a pilot is performing under the influence of alcohol while piloting.

E. Any pilot who refuses to submit to scientific testing or screening for alcohol fails to cooperate fully with the testing procedures, or in any way tries to alter the test results shall be suspended from performing the duties of a pilot pending a hearing. Such refusal to cooperate will be considered as a positive test.

F. Any pilot found to be in violation of this Section may be reprimanded, fined, evaluated and/or treated for alcoholism and/or have their commission suspended or revoked.

G. Any pilot who is required to undergo an evaluation and/or treatment shall do so at their own expense and responsibility; the physician, as well as the evaluation and treatment facility must be approved by the board.

H. The board reserves the right to set a stricter standard of alcohol use for apprentices. Any apprentice who in violation of this regulation or the higher standard established in the apprenticeship program is subject to immediate termination of their participation in the apprenticeship program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2071 (October 2003), amended LR 35:1885 (September 2009), LR 47:881 (July 2021).

Chapter 35. Continuing Education

§3501. Continuing Professional Education

A. Every pilot seeking to maintain a pilot's commission must attend 40 hours of professional education classes and programs every five-year cycle as defined by the board.

B. In addition, the pilot must attend a man model ship training program every five years.

C. Professional education classes and programs must be approved by the board.

D. It shall be the responsibility of the pilot to attend the professional education approved by the board.

E. It shall be the responsibility of the pilot to file with the board proof that the pilot has attended the required professional education.

F. Any pilot who fails to attend the required professional may be reprimanded, fined, and/or suspended until the pilot complies with this Section.

G. The board, for good cause shown, may grant a waiver or extend the time for a pilot to complete the continuing professional education requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:1885 (September 2009), LR 47:881 (July 2021).

Chapter 36. Investigation, Competence, Complaints and Criminal Convictions

§3601. Marine Incident Investigation

A. Any pilot piloting a vessel involved or allegedly involved in a marine incident shall, as soon as practical, notify the board of the incident by telephone. However, said notice must occur within two hours of the incident.

B. The pilot shall provide the board a written report on the form provided by the board within two days after the marine incident was first reported.

C. The pilot shall be available to the board and cooperate with the board during the board's investigation of the marine incident.

D. The pilot shall provide the board a detailed written statement of the marine incident if requested by the board. The report shall be provided to the board with 10 days of the board's request. The board, in its discretion, may grant an extension.

E. A pilot failing to comply with these regulations may be reprimanded, fined, and/or suspended.

F. After its investigation of the marine incident, the board may render a findings and conclusions. The findings and conclusions is solely and exclusively the opinion of the board relative to the conduct of the pilot and is not intended to be introduced as evidence in legal proceedings. Pursuant to R.S. 34:1005 all communications between the pilot and the board are deemed confidential, and the findings and conclusions of the board shall not be deemed discoverable or relevant in any civil proceeding.

G. The board may, under the procedure herein set out, examine such cases of dereliction of duty of a pilot as come to their attention, and on the basis of such examination make recommendations to the governor relative to the pilot's commission. The pilot may elect to consent to such corrective or remedial steps as may be suggested by the board under the circumstances, waiving executive review. All violations of the regulations of any governmental agency by a pilot shall come within the purview of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:1885 (September 2009), LR 47:881 (July 2021).

§3603. Competence

A. All pilots shall complete at least 60 turns each calendar year.

B. Any pilot who has not piloted at least 60 turns in a calendar year shall be required to report the said absence to the board. Prior to returning to the duties of a pilot, the pilot must satisfy the return to duty requirements set forth by the board.

C. Any pilot or apprentice who for any reason becomes physically or mentally incompetent to perform the duties of a pilot is required to immediately notify the board.

D. Pilots are the absolute insurer of their state of mind, physical abilities, and overall well-being.

E. Any pilot who lacks the competency to perform the duties of a pilot shall be suspended from performing the duties of a pilot pending a hearing.

F. Pilots found to be incompetent may be evaluated and/or have their commission suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).
HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:1886 (September 2009), LR 47:882 (July 2021).

§3605. Complaints

A. Any person having cause to file a complaint against a pilot may file such complaint with the board.

B. The complaint may be sent to the board at its address.

Board of River Port Pilot Commissioners
2728 Athania Pky
Metairie, LA 70002
brppc@cox.net

C. The board shall investigate all complaints and take all appropriate action based on the nature of the complaint.

D. The board shall review all anonymous complaints and shall investigate and if necessary take appropriate action on complaints with merit in the board's discretion.

E. Any person wishing to make an anonymous complaint against a pilot may do so by calling the board at (504) 218-7477 or by forwarding an anonymous letter to the above address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).
HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:1886 (September 2009), LR 47:882 (July 2021).

§3607. Criminal Convictions

A. Any pilot or apprentice convicted of the following must notify the board prior to returning to duty as a pilot:

1. a felony;

2. any offense in which the use of drugs or alcohol is involved.

B. The board shall conduct a hearing to review the competency of any pilot who has been convicted of any offense described in §3607.A. The board, in its discretion, may find the pilot by virtue of the conviction incompetent.

C. Any pilot or apprentice who fails to comply with these regulations may be reprimanded, fined, and/or suspended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).
HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2073 (October 2003), amended LR 35:1886 (September 2009), LR 47:882 (July 2021).

Chapter 37. Duty of the Pilot

§3701. Duty of the Pilot

A. The pilot's duties and responsibilities are particular to a pilotage area. A pilot is required to inform a vessel's navigators of the local conditions in the pilotage area. The pilot is required to possess qualities of expertise and knowledge in the territory of the pilotage waters.

B. The pilot is required to perform this service with the necessary skill and without neglect. The pilot is not the insurer of the vessel's safety. The vessel's master and the ship owner are responsible for the sufficiency of the ship and its equipment, the competence of the master, and the crew and their duty to appropriately respond to the advice provided by the pilot.

C. Notwithstanding the responsibility of the pilot to keep the vessel's crew apprised of the local conditions, the master or designee remains in command of the vessel and must intervene in the vessel's navigation if the master deems it is appropriate

D. The pilot is required to maintain a current telephone number, text number, email, and address with the board in the manner prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).
HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 47:882 (July 2021).

Chapter 38. Pilotage Required

§3801. Pilot Required

A. A pilot is required on every vessel subject to pilotage any time the vessel is moved or relocated or if it is the intent to move or relocate the vessel.

B. A pilot is required or on any vessel that cannot maintain safe moorings or maintain its proper position at anchor.

C. The board shall enforce pilot laws pursuant to the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).
HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 47:882 (July 2021).

Chapter 39. Hearings and Committees

§3901. Hearings

A. The board may conduct hearings to perform its duties. The board in its discretion may appoint a hearing officer to conduct investigations. The hearing officer shall not be a member of the board. The hearing officer shall timely

conduct investigations subject to the hearing procedure established by the board. Upon the completion of the hearing, the hearing officer shall timely file a "report of hearing" with the board. The board in its discretion may accept, modify, or reject the report and conduct an independent hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 47:883 (July 2021).

§3905. Committees

A. The board may create committees to assist the board in the performance of its duties.

B. The committee will be chaired by a member of the board and will report to the board.

C. The size and members of the committee shall be designated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 47:883 (July 2021).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXX. River Pilots
Subpart 3. Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots

Chapter 61. General Provisions

§6101. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements regarding the general operation of the board.

B. This board is the sole competent pilotage authority statutorily created for the purpose of regulating, supervising and overseeing the body of pilots authorized by R.S. 34:1042, et seq. These rules shall apply to all applicants, apprentice pilots and commissioned pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:493 (March 2010).

§6102. Definitions

Applicant—any person who has submitted an application to be considered for selection into the Pilot Development Program for New Orleans and Baton Rouge Steamship Pilots.

Apprentice—any person duly selected by the members of NOBRA, but not yet commissioned, who is serving in the Pilot Development Program.

Association or *Pilot Association*—the New Orleans and Baton Rouge Steamship Pilots Association.

Board of Examiners or *Board*—the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, as designated in R.S. 34:1042.

Examiner(s)—those individuals appointed, as per law, to be members of the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots.

Pilot(s)—New Orleans and Baton Rouge steamship pilot(s), as designated in R.S. 34:1043.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:493 (March 2010), LR 38:3165 (December 2012).

§6103. Appointment

A. When there is a need for new examiners, the board shall make recommendations to the governor for replacement(s) to fill any vacancies.

B. When this need arises the board shall recommend only those pilots who have served at least five years as an unrestricted Louisiana state commissioned New Orleans and Baton Rouge steamship pilot.

C. Examiners in the performance of their statutory duties have the exclusive and complete authority to determine their work schedule. Further, examiners shall not suffer any loss of benefits or compensation while they are performing their duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:493 (March 2010).

§6104. Expenses

A. The board shall maintain an office and conduct business as is necessary to fulfill its legislative mandate and/or as may be required by these rules.

B. All ordinary and necessary operating and administrative costs and expenses of the board, including, but not limited to, the cost of administrative offices, furniture and fixtures, communications, transportation, office supplies and equipment, publications, travel, examiners' reimbursement, attorney fees, expert fees, costs, expenses of litigation or any other expenses whatsoever incurred by the board while performing its duties shall be provided by the pilots and timely paid through their pilot association.

C. The board 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 these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and

Baton Rouge Steamship Pilots for the Mississippi River, LR 36:493 (March 2010).

§6105. Rules, Records, Meetings, Application

A. All board rules must be adopted by a majority of the examiners. The board shall maintain records in accordance with R.S. 44:1 et seq., and all other state laws. The board shall conduct its meetings in accordance with R.S. 42:4.1 et seq., and any other state laws.

B. The board shall hold quarterly meetings on the call of the president or by a majority of the examiners. The president has the prerogative of calling additional meetings as needed to conduct business upon giving proper notice, as required by law.

C. Any formal action taken by the board shall be by a majority vote when there is a quorum present. A majority of the board constitutes a quorum.

D. These rules shall apply to all applicants, apprentice pilots and New Orleans and Baton Rouge steamship pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:494 (March 2010), LR 38:3165 (December 2012), LR 44:44 (January 2018).

§6106. Association of Pilots

A. The pilots may form themselves into an association not in conflict with the rules and regulations of the board.

B. The formation of an association incorporated or unincorporated which is for the purpose of providing pilotage service under the law, including but not limited to R.S. 34:1047, must be submitted to the board for approval.

C. The board hereby recognizes the fact that the New Orleans and Baton Rouge steamship pilots have formed themselves into a legal registered corporation known as the New Orleans and Baton Rouge Steamship Pilots Association.

D. No pilot association, has any authority to impose or legislate any rules, bylaws or charter provisions affecting the board; further, any attempt to exercise any authority over or affecting the board is a violation of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:l04l et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:494 (March 2010).

§6107. Duties and Responsibilities of Pilots

A. It is the duty and responsibility of pilots to provide for dispatching services and to maintain continuous communications sufficient to accept requests and dispatch orders for pilotage services 24 hours each day 7 days each week.

B. The pilots shall organize themselves and be available for duty and accept pilotage assignments in accordance with a work rotation schedule.

C. Notwithstanding any sections of these rules, the board reserves the right to compel each and every individual pilot to be available for and accept orders for pilotage assignments in declared emergency situations or in other overriding operational conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:l04l et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:494 (March 2010).

§6108. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid or unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:494 (March 2010).

Chapter 62. Qualifications and Examination of Pilots

§6201. Statement of Purpose

A. The purposes of these rules and regulations is to establish standards for recommendation by the board to the governor of the State of Louisiana for appointment as a New Orleans and Baton Rouge steamship pilot, pursuant to R.S. 34:1043.

B. The board is charged by the Louisiana Legislature with the responsibility of promoting the health, safety and welfare of the citizens of the State of Louisiana and maintaining safety of maritime commerce along the Mississippi River. To this end, the board has set the requisite qualifications to become a pilot at a high level. The combination of education, licensing and experience will foster the type of conscientious pilots who will conduct themselves in a professional manner. It is the sole responsibility of each individual state commissioned pilot to conduct themselves in accordance with the rules and regulations of this board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge

Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:494 (March 2010).

§6202. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued by the board in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements regarding the general qualifications and examination of pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:494 (March 2010).

§6203. Definitions

A. As used in this Chapter, the following terms, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings:

Accredited Institution of Higher Learning—an institution that is accredited by the Commission of Colleges of the Southern Association of Colleges and Schools, the Louisiana Community and Technical College System, or is part of the Louisiana State University System or one whose credits are honored by any of these systems.

Administrative Procedure Act (APA)—the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

Applicant—any person who has submitted an application to be considered for selection into the Pilot Development Program for New Orleans and Baton Rouge Steamship Pilots.

Application—the completed written application including all supporting documentation supplied to the board by an applicant who desires to become a New Orleans and Baton Rouge steamship pilot

Apprentice—any person duly selected by the members of NOBRA, but not yet commissioned, who is serving in the Pilot Development Program.

Association or *NOBRA*—New Orleans and Baton Rouge Steamship Pilot Association.

Board of Examiners or *Board*—Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, as established in R.S. 34:1041 et seq.

Deputy Pilot—a commissioned pilot in the Pilot Development Program.

NOBRA Pilot—a state commissioned New Orleans and Baton Rouge Steamship Pilot, as designated in R.S. 34:1041, et seq.

Pilot Development Program—a period of training and instruction administered to apprentice and deputy pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:495 (March 2010).

§6204. Application

A. Any person wishing to submit an application to enter the Pilot Development Program shall obtain an application from the board. The board's contact information is:

Board of Examiners for New Orleans and Baton Rouge
Steamship Pilots for the Mississippi River
2805 Harvard Avenue, Suite 101
Metairie, Louisiana 70006
Telephone: 1 (504) 887-5797
Facsimile: 1 (504) 887-5799
Website: www.nobraexaminers.louisiana.gov

B. All applications shall be in writing, signed by the applicant and presented to a member of the board or their authorized representative by the applicant. All persons wishing to submit an application shall make an appointment with an examiner or their authorized representative by contacting the board's office. All applications shall be notarized and be accompanied by satisfactory proof of compliance with all of the board's objective requirements. Upon submission a board member or their authorized representative will provide a stamped copy to the applicant indicating the date and time of submission. The board or their authorized representative shall reject all deficient applications and provide an applicant written notice of the specific deficiency.

C. It is the responsibility of the applicant to inform the board of any changes in their contact information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:495 (March 2010), LR 38:3165 (December 2012).

§6205. General Requirements

A. An applicant must be of good moral character. An applicant shall be required to submit to a background check conducted by the Jefferson Parish Sheriff's office. An applicant shall sign all pertinent authorization forms allowing the board to obtain and verify the authenticity of all documents submitted to the board.

B. An applicant must have been a registered voter of the State of Louisiana for the preceding two consecutive years prior to submitting an application.

C. An applicant shall submit proof of a current satisfactory United States Coast Guard approved physical (Merchant Mariner Physical Examination Report). Upon notification of an impending NOBRA selection of

apprentices, the applicant shall submit to a physical examination administered by an Examiner appointed physician specializing in occupational medicine no more than 40 days prior to the selection.

D. An applicant must not have reached his forty-fifth birthday prior to the date of selection into the Pilot Development Program.

E. An applicant shall submit evidence of satisfactory completion of training programs approved by the board for the following courses of instruction:

1. bridge resource management;
2. basic ship handling (5 day);
3. radar observer;
4. advanced firefighting; and
5. CPR.

F. An applicant shall provide proof they have passed a board approved drug screen test consistent with the board's drug screen policy (See Chapter 65 of the board's rules) within 30 days prior to submission of an application. Additionally, upon notification of a pending NOBRA selection of apprentices, the applicant shall submit proof that they have passed a board approved drug screen test not more than 40 days prior to the selection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:495 (March 2010), LR 38:3166 (December 2012).

§6206. Licenses/Education/Experience

A. In addition to the above, an applicant must submit satisfactory proof of the following licensing, education and experience criteria.

1. An applicant must hold at least a current First Class Pilots License, Any Gross Tons, upon the Lower Mississippi River from Chalmette, Louisiana to Baton Rouge Railroad and Highway Bridge at Baton Rouge, Louisiana, including physical, and, at least, either a Master of Steam or Motor Vessels; or Master of Towing Vessels; or Third Mate; or an equivalent or greater United States Coast Guard license.

a. Notwithstanding Paragraph A.1 of this Section, an applicant with first class pilotage from mile marker 92.7 AHP to mile marker 225 AHP shall be eligible for selection into the Pilot Development Program. However, an applicant selected for the Pilot Development Program shall be required to obtain first class pilotage from mile marker 88.0 AHP to Baton Rouge Railroad and Highway Bridge prior to commissioning.

2. An applicant must hold a bachelor's degree or higher degree from an accredited maritime academy approved by and conducted under rules prescribed by the Federal Maritime Administrator and listed at title 46, *Code of Federal Regulations*, part 310.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:495 (March 2010), LR 38:3166 (December 2012), LR 44:44 (January 2018).

§6207. Notice of Apprentice Selection

A. At least 40 days prior to an apprentice selection, NOBRA must inform the board, in writing, that a selection will be held and the date of the selection.

B. At least 35 days prior to the apprentice selection, the board will advertise the date of the apprentice selection, as well as the deadline for submission of application materials, in at least two periodicals, one of which shall have a circulation of the greater New Orleans area and one of which shall have a circulation of the greater Baton Rouge area. In addition, all relevant dates will be posted on the board's website.

C. At least 30 days prior to the apprentice selection, the board will give notice, via U.S. Mail, to all applicants of the date of the selection and the deadline for submitting documentation in support of their application.

D. The deadline for submitting an application and supporting documentation, shall be 3 p.m., 20 days prior to the apprentice selection.

E. At least 18 days prior to the apprentice selection, the board will forward to NOBRA a list of all qualified candidates who meet the criteria for selection, as enumerated in the board's rules.

F. At the conclusion of a NOBRA apprentice selection, NOBRA shall provide the board, in writing, a list of those candidates selected for admission into the Pilot Development Program as an Apprentice Pilot. The board shall unilaterally determine the maximum number apprentices admitted into the Pilot Development Program at any given time. After receipt of notification from NOBRA, the board will notify the selected applicant via U.S. Mail of the time, date and location of the commencement of the Pilot Development Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:496 (March 2010), LR 38:3166 (December 2012), LR 44:44 (January 2018).

§6208. Expiration of Applications

A. Following an apprentice selection, all unselected applications on file with the board will be deemed expired and destroyed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:496 (March 2010), LR 38:3166 (December 2012).

§6209. Pilot Development Program

A. The Pilot Development Program is a mandatory program administered by the board for all Association selected applicants wherein each applicant must successfully and satisfactorily perform such duties, receive training and instruction, meet required standards, pass examinations and obtain such licensure as determined by the board. The program will last not less than four calendar years and be comprised of an apprentice period and a deputy pilot period. Successful completion of the program is required prior to the board approving the deputy pilot for unrestricted pilot status.

1. The board shall determine the number of selected applicants admitted into the Pilot Development Program at any given time.

B. Apprentice Period

1. All persons participating in the Pilot Development Program shall successfully complete the apprentice portion of the program designed and administered by the board. The Apprenticeship Period shall last for a period of not less than one calendar year. This Apprentice Period shall include the following:

a. not less than one year of training and instruction prior to commissioning, during which time the apprentice shall accompany state commissioned pilots in the performance of their duties;

b. advanced qualification testing;

c. any necessary license preparation and upgrades; and

d. any other industry related professional development that may be relevant and necessary.

C. Deputy Pilot Period

1. The Deputy Pilot Period of the Pilot Development Program shall last for a period of not less than three calendar years. The Deputy Pilot Period shall include the following:

a. movement of vessels of particular types and sizes and at times under specific conditions set by the board;

b. training and instruction during which the Deputy Pilot accompanies pilots in the performance of their duties;

c. advanced qualification testing;

d. any necessary license preparation and upgrades;

e. successful completion of licensure and education requirements; and

f. any other industry related professional development that may be relevant and necessary.

D. Time to Complete the Pilot Development Program

1. The Apprentice Period shall be successfully completed within a timely period unless the board determines that exceptional conditions apply such as illness, injury or limited availability of a necessary resource. Participants who fail to demonstrate satisfactory progress as determined by the board shall be subject to dismissal from the Apprenticeship Program.

2. The Deputy Pilot Period may last up to four years provided the participant is making acceptable progress as determined by the board.

3. The Deputy Pilot Period may be extended up to one additional year after the initial four years at the discretion of the board. If, after the one year extension period, the deputy pilot fails to meet the criteria and standards set by the board, said deputy pilot shall be released from the Pilot Development Program and a recommendation will be made to the governor to have the deputy pilot's state commission revoked.

E. Grounds for Release from the Pilot Development Program

1. Any program participant who fails to meet the criteria and standards set by the board shall be released from the Pilot Development Program and will not be recommended to the governor for commissioning. If, already commissioned, a recommendation will be made to have the deputy pilot's state commission revoked.

2. Grounds for release from the Pilot Development Program include, but are not limited to:

a. failure to complete the requirements of any period, stage, segment, license upgrades or educational requirements necessary to progress or complete the program;

b. recklessness and/or display of lack of judgment;

c. disregard of state rules, laws, and regulations;

d. disregard of United States Coast Guard rules and regulations;

e. lack of fitness for the position and responsibilities of a pilot; and

f. any violations of standards of conduct as enumerated in §6307 of the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:496 (March 2010), LR 38:3167 (December 2012).

§6210. Examination by the Board of Examiners; Recommendation to Governor

A. In order to be recommended to the governor for commissioning as a pilot, all apprentices must complete an examination to be conducted by the board as a practicum, orally, written or a combination thereof. This examination shall test the apprentice's knowledge of pilotage and demonstrate the apprentice's proficiency and capability to serve as a state commissioned pilot.

B. The board shall certify to the governor for consideration to be commissioned as a New Orleans and Baton Rouge steamship pilot those apprentices who satisfactorily complete all requirements established by state law and these rules and who successfully complete the examination(s) given by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:497 (March 2010).

§6211. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid or unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:497 (March 2010).

Chapter 63. Standards of Conduct

§6301. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by state commissioned pilots, this board has a strong commitment to the public and maritime industry. The board promulgates these standards of conduct, in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:497 (March 2010).

§6302. Application

A. The board hereby adopts the following rules and regulations relating to all applicants, apprentices, state commissioned New Orleans and Baton Rouge steamship pilots or any association comprised thereof pursuant to the provisions of R.S. 34:1041 et seq. Where applicable, any conflict is to be construed and resolved in the stricter sense. To that end, all current rules and regulations are adopted and incorporated herein in extenso.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:497 (March 2010).

§6303. Authority

A. As mandated by R.S. 34:1041 et seq., these rules and regulations, are promulgated by the board, in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements for pilot oversight of New Orleans and Baton Rouge steamship pilots, apprentices and any association comprised thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:497 (March 2010).

§6304. Definitions

A. As used in this Chapter, the following terms, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Administrative Procedure Act (APA)—the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

Applicant—any person who has submitted an application to be considered for selection into the Pilot Development Program for New Orleans and Baton Rouge steamship pilot(s).

Application—the completed written application including all supporting documentation supplied to the board by an applicant who desires to become a New Orleans and Baton Rouge steamship pilot.

Apprentice—any person duly selected by the members of NOBRA, but not yet commissioned, who is serving in the Pilot Development Program.

Association or *NOBRA*—New Orleans and Baton Rouge Steamship Pilot Association.

Association Officer—any person duly elected by the members of NOBRA to serve as vice president(s), secretary/treasurer or other officer of the association.

Association President—any person duly elected by the members of NOBRA to serve as president of the association.

Board of Examiners or *Board*—Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, as established in R.S. 34:1041 et seq.

Deputy Pilot—a commissioned pilot in the Pilot Development Program.

Fit for Duty—a pilot who meets the board's requirements regarding licensure, physical and medical competency and is current with their continuing education requirements.

Pilot—a New Orleans and Baton Rouge steamship pilot, as designated in R.S. 34:1041 et seq.

Services of a Pilot—any advice or assistance with respect to pilotage by the commissioned pilot, including but not limited to advice concerning weather, channel conditions, or other navigational conditions.

VTC—Vessel Traffic Center, or any other similarly related United States Coast Guard or governmental facility, institution, or program whatsoever.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:498 (March 2010), LR 38:3167 (December 2012), LR 44:45 (January 2018).

§6305. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid or unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:498 (March 2010).

§6306. Violations of the Policy

A. The board shall take the necessary actions for any violation of its policies, rules and regulations. These actions may include referral of such pilot to the Office of the Governor, if required by law, for reprimand, fine, suspension and/or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:498 (March 2010).

§6307. Standards of Conduct

A. The board may in its discretion recommend to the Office of the Governor, reprimand, fine, suspension and/or revocation of a pilot, deputy pilot, or apprentice for the following non-exclusive list of particulars:

1. failure to maintain, in good, valid and current standing a United States Coast Guard First Class Pilot License of any gross tons;

2. failure to remain a qualified and registered voter of the State of Louisiana;

3. failure to successfully complete continuing professional education requirements;

4. failure to maintain a current satisfactory United States Coast Guard approved physical (Merchant Mariner Physical Examination Report);

5. conviction of any felony from any jurisdiction whatsoever;

6. any violation of the board's drug and alcohol policy;

7. neglect of duty;

8. failure to maintain recency; and

9. any violation of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:498 (March 2010), LR 38 3167 (December 2012), LR 44:45 (January 2018).

§6308. Obligation of Pilots

A. Obligation of safe pilotage rest entirely with each and every individual state commissioned pilot. When a pilot offers themselves for any pilotage assignment, such pilot certifies and warrants that they are competent, capable and qualified for such assignment and will perform such assignment in compliance with all applicable standards and duties.

B. 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 or, who after submitting their annual physical to the United States Coast Guard is notified that the Medical Evaluation Division has determined that a condition exists that warrants further medical evaluation shall:

1. notify the board, or arrange for it to be notified as soon as possible, after the 30th day of the disability; or immediately notify the board upon receipt from the United States Coast Guard requiring further medical review; and

2. not resume pilotage duties until the pilot has successfully completed and submitted a Merchant Mariner Physical Examination Report to the board.

C. Before allowing the pilot to return to duty, the board may require the pilot to:

1. submit to an examination, at the board's expense, by a board selected physician;

2. complete a re-orientation program established by the board; and/or

3. appear before the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:498 (March 2010).

§6309. Adoption of Navigational Rules

A. Pilots shall use a standard of navigation consistent with that of a prudent pilot in adherence with common local practices.

B. Pilots shall use their own independent judgment when piloting an assigned vessel.

C. The board does not direct or control a pilot in the performance of their duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:499 (March 2010).

§6310. Continuing Professional Education [Formerly §6311]

A.1. Every pilot seeking to maintain a pilot's commission must successfully complete the following required courses every five years:

a. A Bridge Resource Management (B.R.M.P.) course or seminar for pilots;

b. An Emergency Ship Handling course or seminar for pilots;

c. A marine technical course or seminar, which includes vessel traffic service training;

d. A course or seminar in marine electronic navigation for pilots;

e. A course or seminar on applicable United States Coast Guard navigation regulations (Rules of the Road); and

f. A course or seminar on marine incident management for pilots.

2. Every pilot must annually and successfully complete 8 hours of professional development courses approved by the board. The board may, from time to time, adjust these requirements in order to maintain the highest level of professional competency and pilot safety.

B. All professional education classes and programs shall be approved by the board. The board will maintain a non-exclusive list of approved professional education classes and programs, which may be periodically updated.

C. It is the responsibility of the pilot to attend the necessary professional education classes and to present the board with proof of satisfactory completion.

D. Any pilot who fails to successfully complete the required professional education classes or programs will be removed from duty until the pilot complies with the requirements of this section.

E. The board may, for good cause shown, grant a waiver or extend the time for a pilot to complete the continuing professional education requirement, upon timely application, in writing, by the pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:499 (March 2010), LR 38:3167 (December 2012).

§6311. Mandatory Rest Period [Formerly §6312]

A. For the purpose of this rule, a turn is the time period from dispatch to the termination of the allotted travel time.

B. All pilots shall have a minimum of eight hours rest period between turns.

C. For the purpose of this rule, the rest period begins at the termination of the allotted travel time at the completion of one turn and ends at the time of dispatching for the next turn.

D. Notwithstanding Subsection B, the captain of the station and shift pilots shall be exempt from the minimum 8 hours rest period in between turns. However, in no case shall the captain of the station and shift pilots exceed 12 bridge hours in any 24 hour period.

E. Notwithstanding Subsection B, any pilot completing a turn lasting less than 4 bridge hours or receiving a discharge, shall not be required to comply with the mandatory 8 hours rest period. However, in no case shall any pilot acquire more than 12 hours in a 24 hour period. Pilots requesting eight hours rest period shall not be called or dispatched in less than 8 hours from the completion of their finishing time.

F. Notwithstanding Subsection B, during a state of declared emergency all pilots shall be exempt from the minimum 8 hours rest period in between turns. However, in

no case shall any pilot exceed 12 bridge hours in any 24 hour period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 31:56 (January 2005), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:500 (March 2010), LR 38:3167 (December 2012).

§6312. Recency Requirement

A. The purpose of this Section is to ensure that pilots retain their skills in ship handling and maintain familiarity on the NOBRA route.

B. All pilots shall complete at least 60 turns each calendar year. A calendar year commences on the first of January each year.

1. The president of the board and the president of the association shall be exempt from the recency requirement.

2. Members of the examiners and association officers shall be considered recent by completing 20 turns or 20 observer turns each calendar year.

3. A turn shall be considered a vessel transit of at least 20 miles.

4. Work performed at the VTC shall not be considered as a turn for the purpose of recency. However, a pilot is required to be recent in order to stand watch at the VTC, unless specifically waived by the board for a temporary condition not effecting performance of duty.

5. Notwithstanding Paragraph 4 above, work performed at the VTC shall be considered as a turn for the purpose of recency for all pilots who have been commissioned for 20 years or more.

6. It is the duty of any pilot who fails to maintain recency to remove themselves from rotation and immediately notify the board.

C. Failure of a pilot to remove themselves from rotation and notify the board shall be deemed a violation of these rules and shall result in an investigation.

D. Before a non-recent pilot is eligible to resume pilotage duty, the pilot shall be required to successfully complete, to the exclusive and unilateral satisfaction of the board, a specifically designed program to re-orient said pilot to Mississippi River pilotage.

1. Before a non-recent pilot is eligible to resume pilotage duty, the board reserves the right to require the pilot to satisfactorily pass a current United States Coast Guard approved physical (merchant mariner physical examination report).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 44:45 (January 2018).

Chapter 64. Investigations and Enforcement

§6401. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by state commissioned pilots, this board has a strong commitment to the public and maritime industry. In accordance with state law, and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the board will maintain and enforce a strict policy of conducting full and complete investigations, and possible subsequent referrals to the office of the governor, of any and all violations of board rules and state and/or federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:500 (March 2010).

§6402. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued by the board in accordance with the Administrative Procedure Act under R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements for oversight of pilots, apprentices, candidates or any association of pilots comprised thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:500 (March 2010).

§6403. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid or unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:500 (March 2010).

§6404. Duty to Report

A. In any case, where a vessel under pilotage shall go aground, or shall collide or allide with any other object, or

shall meet with any incident, or be injured or damaged in any way, the pilot shall report the matter as follows:

1. report the incident to the nearest United States Coast Guard Marine Safety Unit by way of the most expeditious means available;

2. report the incident by way of the most expeditious means available to NOBRA and report for mandatory post incident drug and alcohol testing;

a. notify the board of the incident by way of the most expeditious means available;

3. be available for interview by the board and furnish complete details of the incident; and

4. submit a written report to the board as soon as practical, but no later than thirty days following the incident.

B. Any pilot who neglects or refuses to submit a written report to the board as required by these rules may be reported to the governor for possible disciplinary action.

C. Any pilot requested or summoned to testify before the board shall appear in accordance with said request or summons and answer any questions related to or in any way connected with the pilot's service. The pilot has the right to legal counsel at this meeting.

D. Upon receipt of any incident by a pilot the board shall conduct an investigation and take appropriate action commensurate with the nature of the incident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:500 (March 2010), LR 38:3168 (December 2012).

§6405. Removal from Duty

A. When any examiner has reason to believe that the conduct or actions of a pilot is creating a dangerous or unsafe condition, the examiner may immediately relieve that pilot from duty, without the necessity of formal notice and hearing, in order to protect the interests of the State of Louisiana. However, at the earliest possible time, the board shall conduct an investigation of the pilot's conduct, as per these rules, and conduct any necessary hearings in order to protect the due process and equal protection requirements afforded the pilot by the Louisiana and United States Constitutions.

B. When any examiner has reason to believe that a pilot is or may be under the influence of alcohol, drugs or any other stimulant or depressant or is suffering from a medical condition that may affect the pilot's ability to perform their duties, the examiner shall immediately relieve that pilot from pilotage duty, without the necessity of formal notice and hearing, in order to protect the interests of the State of Louisiana. However, at the earliest possible time, the board shall conduct an investigation of the pilot's conduct or condition, as per these rules, and conduct any necessary hearings in order to protect the due process and equal protection requirements afforded the pilot by the Louisiana and United States Constitutions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:500 (March 2010).

§6406. Investigations and Enforcement

A. All incidents and complaints reported to the board shall be referred for investigation.

1. any source may file a sworn complaint within one year of the alleged acts complained of;

2. the board shall receive any sworn complaint from any source against any pilot, deputy pilot or apprentice while in the performance of his duties;

3. any sworn complaint submitted by any source to the board shall be typewritten and submitted on plain paper and shall include the date and time of the incident, a description of what happened, the type of incident, casualties, location, conditions, name of vessel piloted, if known, any other vessels, structures, or objects involved, the name of the pilot, if known, and any allegations against the pilot, and shall be given in an authentic act in which the complainant swears to the truthfulness of the allegations, subject to the penalties of perjury;

4. if a sworn complaint is not submitted in the prescribed manner, the board shall return it, with an explanation of error, and without prejudice to the sender to properly refile.

B. The board shall appoint an investigating officer to conduct a preliminary investigation of the incident and/or complaint and report their findings to the board.

C. Following the preliminary investigation, the board shall determine whether the incident and/or complaint is sufficient to justify further proceedings or may dismiss the matter.

D. If after the preliminary investigation, the board is of the opinion that the incident and/or complaint is sufficient to justify a full investigation, the board shall, if so required by law, notify the office of the governor and request authority from the governor to conduct a full investigation and/or administrative hearing regarding the incident and/or complaint. Following receipt of authority from the governor, if so required by law, the board shall authorize its investigating officer to conduct a full investigation of the incident and/or complaint.

E. Following the full investigation, the investigating officer shall make a report to the board, who, in its exclusive discretion, shall determine whether the incident and/or complaint is sufficient to justify further proceedings or may dismiss the incident and/or complaint.

F. Following the full investigation, if the board is of the opinion that an administrative hearing is required, the board shall give notice to the pilot. Said notice shall be issued pursuant to R.S. 49:955(B) and shall include:

1. a statement of the time, place, and nature of the hearing;

2. a statement of the legal authority and jurisdiction under which the hearing is being held;

3. a reference to the particular sections of the statutes and rules involved; and

4. a short and plain statement of the matters asserted.

G. The board may make informal disposition of any investigation or adjudication/hearing by means of stipulation, agreed settlement, consent order or default. If required by law, approval of such informal disposition must be sought from the Office of the Governor before the informal disposition may be deemed final.

H. Any pilot may be represented in any adjudication/hearing before the board by an attorney at law duly admitted to practice in the State of Louisiana. Following receipt of proper notice of such representation, all further notices, subpoenas or other processes related to the proceedings shall be served on the pilot through designated counsel of record.

I. Any pre-hearing motion shall be referred for decision to the board, who in its discretion, may rule on the motion prior to the hearing date or may defer the matter until the hearing date.

J. All investigations and hearings undertaken as authorized herein above, shall be conducted pursuant to the Administrative Procedure Act, R.S. 49:950 et seq. If any specific provision of this section in any way conflicts with the more general rule of the Administrative Procedure Act, the more specific rule of this section shall govern.

K. Upon request of any party and upon compliance with the requirements of this Section, any board member shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

L. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

M. Unless otherwise requested by the respondent/pilot, adjudication hearings, shall be conducted in open session, unless the respondent/pilot expressly requests that the matter be conducted in executive session, all as per law.

N. At the hearing, opportunity shall be afforded to all parties to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the administrative notice.

O. Unless stipulation is made between the parties, and approved by the board, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings. Witness fees (expert or otherwise) and related hearing costs caused by the respondent/pilot shall be their responsibility; in no way whatsoever shall the board be liable for nor responsible for costs or fees incurred by the respondent/pilot.

P. During evidentiary hearing, the board shall rule upon all evidentiary objections and other procedural questions, but may consult in or out of executive session, all as per law. At any such hearing, the board may be assisted by legal counsel, who is independent of the prosecutor and who has not participated in the investigation or prosecution of the case.

Q. The record in a case of adjudication shall include, but is not limited to:

1. the administrative notice, notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery, and all pleadings, motions, and intermediate rulings;

2. evidence received or considered at the hearing;

3. a statement of matters officially noticed except those so obvious that statement of them would serve no useful purpose;

4. offers of proof, objections, and rulings thereon;

5. proposed findings and exceptions, if any;

6. the decision, opinion, report or other disposition of the case made by the board;

7. findings of fact; and

8. conclusions of law.

R.1 In an adjudication hearing, the board may give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Effect shall be given to the rules of privilege recognized by law. The board may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written or recorded form.

2. All evidence, including records and documents in the possession of the board which the parties desire the board to consider, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

3. Notice may be taken of judicially cognizable facts and generally recognized technical or scientific facts within the board's knowledge. The board's experience, technical competence and knowledge may be utilized in the evaluation of the evidence.

4. Any member of the board serving as presiding officer in an adjudication hearing shall have the power to and shall administer oaths or affirmations to all witnesses appearing to give testimony, shall regulate the course of the hearing, set the time and place of continued hearings, fix the time for the filing of briefs and other documents, if they are required or requested, and may direct the parties to appear and confer to consider simplification of the issues.

S.1. The final decision of the board in an adjudication proceeding shall be in writing and shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on behalf and in the name of the board.

2. Upon issuance of a final decision, a copy thereof shall promptly be served upon all parties of record, or upon respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of administrative notices.

T.1. A decision by the board in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the board pursuant to written motion filed with the board within 10 days from service of the decision on respondent or on its own motion. A motion for rehearing, reopening, or reconsideration shall be made and served in the form and manner prescribed herein above and shall set forth the grounds upon which such motion is based, as provided herein.

2. The board may grant rehearing, reopening, or reconsideration it if is shown that:

a. The decision is clearly contrary to the law and the evidence;

b. The respondent has discovered since the hearing evidence important to the issues which he or she could not have with due diligence obtained before or during the hearing;

c. Other issues not previously considered ought to be examined in order to properly dispose of the matter; or

d. There exists other good grounds for further consideration of the issues and the evidence in the public interest.

U. As per law, the board shall have the specific authority to recommend probation, to impose a fine, to recommend reprimand or removal from duty, or to recommend to the governor that the commission of any pilot be suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2478 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:501 (March 2010), LR 38:3168 (December 2012).

§6407. Recusal

A. No member of the board shall participate in the investigation of or vote on any matter to which he/she is a party to or in which he/she has a conflict of interest. In such cases, he/she shall automatically be recused from participating in or voting on such matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2479 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:502 (March 2010).

Chapter 65. Drug and Alcohol Policy

§6501. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by pilots, the board will maintain and enforce a strict policy of zero tolerance for the use of prohibited drugs and the misuse of alcohol. Prohibited drugs shall not be used, possessed, nor distributed by any pilot, at any time, whether on duty or off duty.

B. To this end, all state commissioned NOBRA pilots shall be subject to drug and alcohol testing as per U.S. DOT rules (49 CFR Part 40) and United States Coast Guard regulations (46 CFR Parts 4, 5 and 16). This testing is federally mandated and all rules for specimen collection, handling, testing, confirmation, reporting and medical review shall be adhered to at all times. Additionally, in order to maintain its policy of zero tolerance, the board hereby establishes an enhanced drug screening program, over and above the federal rules. All pilots, apprentices and applicants shall be subject to this enhanced drug screening program, in addition to any testing required under the federal rules. As outlined below, this enhanced drug screening program shall consist of screening in the following situations: pre-qualification, random, post accident, reasonable suspicion, return to duty and follow-up.

C. Any violation of this drug and alcohol policy shall be reported to the United States Coast Guard and shall subject the pilot to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1794 (August 2002), amended by the Office of the Governor, Board of

Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:502 (March 2010).

§6502. Definitions

A. As used in this Chapter:

Administrative Procedure Act (APA)—the Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

Alcoholic Beverage—any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol; any substance that may otherwise impair or affect the ability of a pilot to function in any way whatsoever.

Applicant—any person who submits the written application for admission into the Pilot Development Program.

Application—the form supplied by the board to any individual seeking selection into the Pilot Development Program.

Apprentice—any person duly selected but not yet commissioned, to serve in the Pilot Development Program.

Board of Examiners—Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, as established by R.S. 34:1041 et seq.

NOBRA Pilot or *Pilot*—a commissioned Mississippi River pilot for the territory established in R.S. 34:1041 et seq.

Drug—any and all controlled dangerous substances as defined in R.S. 40:961(7). Drugs which are illegal under federal, state, or local laws include but are not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited or licensed physician.

Prescription Medication—any medication distributed by or with the authorization of a licensed physician, as defined in R.S. 40:961(33).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots LR 28:1794 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:503 (March 2010).

§6503. Circumstances for Drug Testing

A. Regular and random, unannounced urine and hair drug screening shall be done at a frequency designed to assure the state, shipping clients and the general public that the board is dedicated in its enforcement of a zero tolerance policy towards prohibited drugs and the abuse of prescription drugs.

B. Additionally, the board reserves the right to require a drug screen whenever the board has reasonable suspicion a pilot is under the influence of a drug. Such screen may be done by any means chosen by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:503 (March 2010).

§6504. Urine Testing

A. Any pilot involved in an accident or incident while performing his duties as a pilot shall be subject to a urine drug screen test, as required by these rules, U.S. DOT rules and United States Coast Guard regulations. This urine drug screen shall consist of an expanded screening panel designed to detect various illegal drugs, and commonly abused prescription drugs, which are not detected by standard U.S. DOT screens. The expanded panel shall be determined from time to time at the discretion of the board. The results of all drug screens taken pursuant to this paragraph shall become part of the pilot's permanent personnel file.

B. In addition to these required drug screens, all pilots shall be subject to random urine screening by means of the expanded screening panel. This random urine screen will be at a rate of a minimum of six pilots per month. The board shall design a protocol for the random selection of the pilots to be tested. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:503 (March 2010).

§6505. Hair Testing

A. Every NOBRA pilot shall submit to a hair drug screen on a bi-annual basis. The timing of the bi-annual hair drug screens for each pilot shall be randomly selected as per a protocol designed by the board. Each pilot shall appear for their hair drug screen when notified to do so by the board. This hair screen is designed to detect various illegal drugs, and commonly abused prescription drugs, which may have been used by a pilot. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:503 (March 2010).

§6506. Split Sample/Safety Net Testing

A. Whenever there is a positive test result, that pilot shall be entitled to split sample/referee sample testing or safety net testing through the board's designated testing facilities.

B. The board shall designate, an authorized testing facility or laboratory.

C. The designated testing facility or laboratory shall ensure and be responsible that all specimen collection and related procedures are properly followed and maintained.

D. The designated testing facility or laboratory shall be responsible for the safeguarding of all specimen collection facilities, equipment and samples collected.

E. Samples shall be taken, witnessed and handled in accordance with all applicable federal guidelines.

F. The designated testing facility or laboratory shall assist in ensuring that the sample will be correctly and properly transferred for testing purposes.

G. The following procedure is hereby established for the testing of a split or referee urine, blood or hair sample.

1. Upon the timely request of a pilot, a urine or blood specimen may be split or divided into approximately equal parts; one being processed for initial laboratory testing for detection of the presence of prohibited drugs or substances therein; the remaining or second part shall be identified as the split or referee sample to be processed for future testing under the following procedures. Failure to timely request the taking of a split or referee sample shall be deemed, classified and designated as a waiver of any and all rights to have a split or referee sample.

2. As to hair, upon notice that a test result has been returned or reported as positive, the pilot shall have twenty-four hours to notify the testing facility that the pilot requests that the referee sample be properly taken and tested. Failure of the pilot to timely notify the testing facility that the referee sample is to be tested shall be deemed classified and designated as a waiver and forfeiture of having the referee sample tested.

3. The split or referee sample may, at the election of the pilot, be tested by an alternate testing facility or laboratory, as pre-approved by the board.

H. All test reports shall be submitted to this board in writing.

I. Reports to this board shall present documentary or demonstrative evidence acceptable in the scientific community and be admissible in court in support of a professional opinion as to the positive findings.

AUTHIORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:504 (March 2010).

§6507. Effect of Positive Drug Screen/Disciplinary Action

A. Any pilot with a prohibited drug detected in his system will have an opportunity to explain any medical condition which may have had an effect on the test result. However, passive inhalation or atmospheric contamination are not acceptable explanations for confirmed positive drug tests.

B. Any positive drug screen shall be reported to the United States Coast Guard and will place the pilot's state commission in jeopardy. Any pilot testing positive for a prohibited drug, or residual thereof, shall be removed from duty, pursuant to the board's rules, pending a hearing pursuant to R.S. 34:1042. Any pilot who presents a positive drug screen shall be subject to disciplinary action by the board, including the recommendation of revocation or suspension of his commission by the governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the board on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for drug use shall do so at their personal expense. In addition, the evaluation and treatment facility must be pre-approved by the board.

C. Refusing a drug screen, or any attempts at alteration or substitution of samples is considered a violation of the federal rules, as well as this policy. Any pilot who refuses to submit to a drug screen, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results, shall be removed from duty as a pilot pursuant to the board's rules, pending a hearing pursuant to R.S. 34:1042. Furthermore, avoiding the directions of the board after an incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the board.

D. In addition, if the master of a vessel refuses a pilot's services due to the alleged impairment of the pilot, the pilot shall immediately contact a member of the board to receive instructions regarding testing. The pilot shall then immediately proceed to a testing facility selected and pre-designated by the board. Furthermore, avoiding the directions of the board after an incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with RS. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1796 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:504 (March 2010).

§6508. Prescription Drug Use

A. Every pilot has a duty to ascertain whether a prescription medication, legally prescribed, will impair their ability to safely perform their piloting duties. If, after consultation with their treating physician, a pilot reasonably believes or has been informed or advised that a prescription medication may cause impairment, the pilot shall inform the board and remove themselves from duty until such time that their treating physician, in consultation with a physician specializing in occupational medicine, to be named by the board, certifies that they may return to duty or changes the medication to one which will not impair the pilot.

B. If a drug screen indicates the presence of a prescription drug which may impair a pilot's ability to perform their piloting duties, and the pilot has not voluntarily taken leave, the pilot shall be removed from duty until such time the board, in consultation with a physician specializing in occupational medicine to be named by the board, can determine that the pilot is fit for duty.

AUTHORITY NOTE: Promulgated in accordance with RS. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1796 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:504 (March 2010).

§6509. Alcohol Use

A. No pilot shall consume any alcohol within six hours before, or during, the performance of their piloting duties. Alcohol testing shall be conducted following any incident involving a pilot in the performance of their duties. The board and/or the Board of Directors of NOBRA may also require a pilot to submit to alcohol testing upon reasonable suspicion that a pilot is performing his duties while under the influence of alcohol. Duty, in this case, shall be defined as the time the pilot is dispatched for pilotage services. Testing positive for alcohol while on duty is directly reportable to the board and is not subject to review by a Medical Review Officer. Any pilot who requires medicines, such as cough and cold medications, which may have a small amount of alcohol, should ask their physician or pharmacist to recommend a non-alcoholic medication. While the United States Coast Guard prohibits alcohol use above the level of 0.04 percent BAC, the board reserves the right to take disciplinary action on lower alcohol levels, depending on the facts and circumstances of each particular case.

B. Any positive alcohol test shall be reported to the United States Coast Guard and shall place the pilot's state commission in jeopardy. Any pilot testing positive for alcohol shall be removed from duty pending a hearing. Any pilot with a positive alcohol test shall be subject to disciplinary action. The proper disciplinary action shall be determined on a case by case basis. In addition, the board may require the pilot to undergo evaluation and treatment at a facility pre-approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1796 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:505 (March 2010).

§6510. Confidentiality

A. The results of all positive drug screens and alcohol tests shall be confidential and shall not be disclosed to any entity or person other than:

1. The Governor of Louisiana;

2. The board of Louisiana River Pilot Review and Oversight;

3. The United States Coast Guard; and

4. In the event that the board determines that a hearing is required pursuant to R.S. 34:1042, there shall be no requirement of confidentiality in conducting the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1797 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:505 (March 2010).

§6511. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid and unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1797 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:505 (March 2010).

§6512. Applicable Procedures

A. Any investigation, action or disciplinary proceeding undertaken in conjunction with this policy shall be conducted in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1797 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:505 (March 2010).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXX. River Pilots
Subpart 4. Board of River Port Pilot Commissioners and Examiners

Chapter 91. Calcasieu River Waterway River Port Pilots

§9101. Definitions

Agent—an authorized representative of the vessel owner.

Apprentice Pilot Review Committee—a committee selected by the general membership of the Associated Branch Pilots of the Port of Lake Charles to receive and review applications, interview pilot candidates, and monitor training progress. Membership on this committee is determined by vote of the association.

Associated Branch Pilots of the Port of Lake Charles Fee Commission—the fee commission established under R.S. 34:1121 et seq., composed of eight members and eight alternates to represent the respective interests of the association and the steamship industry.

*Associatio*n—pilot members of the Associated Branch Pilots of the Port of Lake Charles who have incorporated the association permitted by R.S. 34:1175 as "Lake Charles Pilots, Inc."

*Board of Commissioners and Examiner*s—(hereinafter used interchangeably as Board of Examiners, Board, Commission, Examiners or Board of Examiners) shall mean the Board of River Port Pilot Commissioners and Examiners for the pilotage area defined in R.S. 34:1072.

*Examiner*s—those individuals appointed pursuant to R.S. 34:1072.

Harbormaster—the Lake Charles Harbor and Terminal District agent who acts as authorized by R.S. 34:215(2), to operate the navigable Calcasieu River Waterway system, coordinate and implement necessary navigation operating controls and, through liaison, cooperation and mediation, establish priorities for safe, secure and efficient waterway system operation.

Louisiana Public Service Commission—the body, which constitutes the fee commission (see R.S. 34:1121.C) for the purpose of making fee decisions in the event of unresolved disputes within the Associated Branch Pilots of the Port of Lake Charles Fee Commission.

Marine Casualty—any occurrence involving a vessel which results in damage by or to the vessel, its apparel, gear, or cargo, or injury or loss of life of any person; and includes among other things, collisions, allisions, strandings, groundings, founderings, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect or impair the seaworthiness of a vessel. Momentarily touching soft bottom while maintaining headway is considered a "near-miss" grounding within the dredged channel project reaches of the pilotage area.

Master License—the license issued by the United States Coast Guard.

Nepotism—favoritism shown to a relative as designated in R.S. 42:1119 of the Code of Governmental Ethics.

Pilot—a river port pilot as designated in R.S. 34:1073.

Pilotage Area—navigable streams, channels and boundary waters, including the Intracoastal Canal, Calcasieu River and the Calcasieu Ship Channel, within the Parishes of Calcasieu and Cameron, and across bars and passes, and on the adjacent waters of the Gulf of Mexico, the latter being out to a distance beyond the state's geographic boundary to any point in the Gulf of Mexico at which pilot assistance may be required by the master of a vessel.

Port—waterways and facilities under the jurisdiction of the Lake Charles Harbor and Terminal District, including *agents* who may be designated as harbormaster who are authorized by R.S. 34:215(2), to operate the navigable Calcasieu River Waterway system. Through state-authorized waterway operation, port entities strive with liaison, cooperation, and mediation to ensure a safe, secure and efficient Calcasieu River Waterway.

Service Time—the applicant's service time on the designated pilotage area, inland waters of the United States, or the oceans of the world.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1476 (June 2002).

§9103. Board of River Port Pilot Commissioners and Examiners

A. Commissioners and examiners shall be selected as members of the board in accordance with R.S. 34:1072.

B. The officers of the board shall be chairman, vice-chairman, and secretary.

C. The chairman shall preside at all meetings of the board. Except as otherwise authorized by resolution of the board of commissioners of the board of river port pilot commissioners and examiners, the chairman shall sign all contracts, deeds and other instruments made by the board of river port pilot commissioners and examiners. At each meeting, the chairman shall submit such recommendations

and information as he or she may consider proper concerning the business, affairs and policies of the board.

D. The vice-chairman shall perform the duties of the chairman in the absence or incapacity of the chairman; and in case of the resignation or death of the chairman, the vice-chairman shall perform such duties as are imposed on the chairman until such time as the board of commissioners of the river port pilot commissioners and examiners shall select a new chairman.

E. The secretary shall have general supervision over the administration of board business and affairs, subject to the direction of the board. The secretary shall keep the records of the board, record all votes, and shall keep a record of board proceedings in a journal of proceedings and shall perform all duties incident to the office. All meetings shall be transcribed for placement in the journal. The secretary shall have the care and custody of all funds of the board and shall deposit the same in the name of the board of river port pilot commissioners and examiners in such bank or banks as the board may select. The secretary shall sign all orders and checks for the payment of money and shall disburse such monies under the direction of the board. All checks for the payment of money in excess of $750 shall be co-signed by the chairman. The secretary shall keep regular books of accounts showing receipts and expenditures and such books of accounts shall be open to inspection by any commissioners at any time upon request.

F. The officers of the board shall perform such other duties and functions as may from time to time be required by the board of commissioners or the by-laws or rules and regulations of the board or as may be designated by the chairman.

G. The officers of the board shall be elected by affirmative vote of a majority of the board annually at the first regular meeting in January of each year and such election shall automatically be placed upon the agenda of such meeting. Such officers shall serve a term of one year. There shall be no prohibition on the same individual being elected to the same office in successive years. Should an officer resign or otherwise vacate office by death, resignation or removal from the board or otherwise, then an election to replace such officer, subsequent to the governor's appointment as necessary, shall be held at the next regularly scheduled meeting of the board or, at a specially called meeting, whichever occurs first. If a vacancy in an office occurs and a replacement is elected as provided herein, then that person who is elected to the vacated office shall serve only the unexpired term of the office.

H. In the case of the absence of any officer of the board, or for any other reason that the board may deem sufficient as to any officer, the board may delegate, for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any member of the board, provided a majority of the entire board concurs therein.

I. The board shall conduct business as is necessary to fulfill legislative mandates or as may be required by the rules herein.

J. All officers shall serve without compensation.

K. The board members, in the performance of their statutory duties, have the exclusive and complete authority to determine their work schedule. Further, board members shall not suffer any loss of benefits or compensation while they are performing their duties.

L. Reasonable ordinary and necessary operating and administrative costs and expenses, incurred by the board while performing its duties, shall be paid or reimbursed by the system described herein. Expenses shall be approved monthly by the board and submitted to the association. The association shall pay or reimburse expenses of the board with 15 days of receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1477 (June 2002).

§9105. Rules, Records, Meetings, Association

A. The board issues these rules and regulations to administer, implement, and enforce R.S. 34:1072. The procedure for proposing, amending, repealing, and promulgating a rule or regulation shall be in accordance with the Administration Procedure Act, R.S. 49:950 et seq.

B. These rules and regulations include, but are not limited to:

1. establishing procedures for conducting investigations and hearings by the board;

2. requiring procedures governing applications and examination for apprentice pilots' appointments and pilots' commissions;

3. establishing required education, experience, and training of applicants;

4. requiring a mandatory drug and alcohol testing program, to comply with 46 CFR 16 and 49 CFR 40, Procedures for Transportation Workplace Drug Testing Programs, including random tests, post-incident tests, and tests based upon reasonable cause;

5. requiring a mandatory periodic physical examination and, for reasonable cause, a physical and/or mental examination to determine the fitness of pilots to perform duties;

6. ensuring required integrity, professional competence, and physical standards for apprentices and pilots;

7. clarifying the duties owed by a pilot to the owner(s) of the vessel, agent(s), and the owner(s) of the cargo; and

8. addressing any other matter which the board may deem necessary or appropriate for the administration, implementation, and enforcement of R.S. 34:1072.

C. All rules must be adopted by a majority of the board of commissioners. Further, rules must receive legal review before final approval and adoption. The board shall maintain

records in accordance with the Public Records Law, R.S. 44:1 et seq., and other applicable state laws. The board shall file an annual report of investigations, findings, actions, and accident data in accordance with applicable state laws. The board shall conduct its meetings in accordance with the Open Meetings Law R.S. 42:4 et seq., and any other state laws.

D. The board shall hold a regular annual meeting on the fourth Monday of January of each year at 10 a.m. for the purpose of electing officers and conducting any other business as may be appropriate. The board may hold such other meetings as are deemed appropriate and best to conduct the business of the board. The president alone or any two members of the board may call any meeting of the board. The president alone or any two members of the board may cancel any meeting of the board if the board has no business to conduct. All meetings of the board will be held at the board meeting room of The Lake Charles Harbor and Terminal District, 150 Marine Street, Lake Charles, Louisiana, or such other place as may be designated in the call of the meeting.

E. These rules shall apply to all pilots commissioned as pilots by the governor upon recommendation of the board and who are engaged in the performance of the duties of a pilot within the pilotage area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1478 (June 2002), amended LR 30:1695 (August 2004).

§9107. Minimum Requirements, Applicants, Examination, Appointments

A. The pilot apprentice applicant shall be a graduate from either The U.S. Merchant Marine Academy (deck curriculum), The U. S. Coast Guard Academy and qualified as officer-in-charge of a navigational watch, The U.S. Naval Academy and qualified as officer-in-charge of a navigational watch, The Great Lakes Maritime Academy (deck curriculum) or any other maritime academy approved by and conducted under rules prescribed by the Federal Maritime Administrator and listed at Title 46, Code of Federal Regulations, Part 310. Five years of experience as master or commanding officer of naval vessels or merchant ships including USNS or MSC ships, ocean tugs, harbor tugs, integrated tug/barge units, or dredge ships may be substituted for the requisite educational requirement with approval of the board.

B. Candidates seeking to participate in a pilot apprentice training program shall hold a U.S. Coast Guard issued license authorizing service as master, steam or motor vessels of at least 1600 gross tons upon oceans or near coastal and be reasonably expected to be able to eventually comply with federal regulatory requirements specified at 46 CFR Subpart G; Professional Requirements for Pilot Licenses which are considered by the board to be minimum requirements for commissioning pilots under the board's jurisdiction. These requirements include time-in-service, route familiarization, examination, physical requirements, tonnage service requirements and capability to acquire and maintain knowledge of waters to be navigated. Prospective candidates of good character who meet the aforementioned requirements may submit applications evidencing these requirements to the Apprentice Pilot Review Committee, 4902 Ihles Road Lake Charles, LA 70605. A copy of the application shall also be submitted to the Board of Commissioners and Examiners, c/o Port of Lake Charles, P.O. Box 3753, Lake Charles, LA 70602. Applications should be accompanied by a personal résumé, photograph, birth certificate, three letters of recommendation, health profile conducted by a recognized health professional evidencing probable ability to comply with 46 CFR 10.205(d) and a U.S. Coast Guard Information Release Form signed and notarized, in any format, to authorize personnel involved in the selection process to investigate and/or obtain applicant's records from the U.S. Coast Guard or from any other person or entity deemed appropriate, including but not limited to licenses, casualty involvement, or any disciplinary information. Applications will be kept on file until an opening for an apprentice pilot is anticipated, or a maximum of two years, unless updated. When the association anticipates openings for apprentice pilots, the Apprentice Pilot Review Committee will review all current applications and contact best-qualified selected applicants to appear for interviews. The Apprentice Pilot Review Committee, subsequent to reviewing applications and interviewing applicants, will present their findings and recommendations to association members for their vote on apprentice candidate acceptance. The board shall provide oversight and final approval over the pilot candidate application and selection process and shall approve and make recommendations to the governor for subsequently awarding pilot commissions.

C. Prior to being recommended for a state commission, applicants must have completed, and maintain current, Ship Handling Simulator courses and Bridge Resource Management courses and any other industry related courses that the association and examiners may deem relevant and necessary.

D. Qualified applicants desiring to become pilots shall not have reached their forty-fifth birthday before being accepted into the apprenticeship program and an applicant shall not be under the age of 30 when accepted as an apprentice.

E. A person applying for an appointment under this section shall not have been convicted of a felony offense involving either drugs or the personal consumption of alcohol in the 60 months prior to the date of application.

F. Applicants must submit to and pass a drug screen test prior to being accepted into the apprenticeship program and agree to participate in mandatory drug and alcohol-testing programs, required by 46 CFR 16 and conducted in compliance with 49 CFR 40.

G. Any signed obligation to abide by the charter, by-laws, rules and regulations of the association or of the Lake

Charles Pilots, Inc. shall not be contrary to established rules and regulations of the board.

H. Applicants must serve an orientation period over the route, as an apprentice pilot, for not less than 12 months, which may be extended up to one additional year as may be determined by the board, if recommended by currently commissioned pilots who actively train any apprentice. If, after the one-year extension apprenticeship period, the applicant fails to meet the criteria and standards of the examiners, the said applicant shall be released from the apprenticeship program. The criteria and standards of the board include but are not limited to:

1. applicant's competency and display of good judgment;

2. regard for federal, state, and local laws and regulations;

3. fitness for the position and duties of a river pilot;

4. moral integrity, veracity, capability, and satisfactorily addressing any other such issues or questions brought by any responsible party to the attention of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1478 (June 2002), amended LR 32:1444 (August 2006).

§9111. Pilotage Certification

A. Commissioned pilots shall comply with all requirements to maintain current their Louisiana State Commission and such other certifications and continuing educational classes, training, or programs as determined necessary by the board.

B. Commencing January 1, 2006, every commissioned pilot in order to maintain a valid pilot's commission must attend 40 hours of continuing professional education classes and programs every five years. In addition each commissioned pilot must attend a continuing ship simulator-training program every five years. Classes, programs, and simulator-training received prior to January 1, 2006 shall not be counted toward this requirement.

C. The professional education classes and programs required by the board include, but are not limited to, the following:

1. electronic ship simulation training;

2. small scale ship simulation training;

3. ARPA training (Automatic Radar Plotting Aid);

4. emergency ship handling training;

5. bridge resource management training for pilots;

6. radar certificate renewal;

7. tractor tug training;

8. portable pilot system lap top computer training;

9. any other class, course or program that the board deems appropriate.

D. Any required continuing professional education class, training or program or required ship simulator-training program shall be a class or program which has been appropriately certified, as determined by the board, and is one generally utilized and participated in by other commissioned pilots.

E. On or before January 10 of each year, commencing January 2007, each pilot shall submit to the board evidence of his attendance and completion of the above required continuing education classes and programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1479 (June 2002), amended LR 32:1444 (August 2006).

§9113. Association of Pilots

A. River port pilots may form themselves into an association not in conflict with the rules and regulations of the board.

B. The formation of any association, incorporated or non-incorporated, which is for the purpose of providing pilotage service under the law, including but not limited to R.S. 34:1075, must be submitted to the board for approval. Such applications must meet all legal requirements, provide for a stable, reliable, efficient, and safe pilotage system, protect the life and property of the region and serve the best interest of the majority of pilots.

C. The board hereby recognizes the fact that the Lake Charles pilots have formed themselves into a legal registered corporation known as the Lake Charles Pilots, Inc., intending to operate in compliance with all state laws and which shall comply with the regulations and directives of the board.

D. No pilot association may impose any custom, rule, by-law or charter provision on the board or its authority. Further, any attempt to exercise any authority over or affecting the board's authority shall be deemed a violation of Chapter 6 of Title 34 of the Louisiana Revised Statutes governing pilotage.

E. Pilots shall not discontinue duties without permission. Except for reasons of health, satisfactory evidence of which shall be furnished to the board when requested, no commissioned pilot or apprentice shall discontinue to act as such nor remove himself/herself, at any time, from a duty status, without first obtaining the permission of the group of pilots with which associated or of some duly authorized official of that group, and no such permitted discontinuance or absence for a period of more than three months shall be valid without additionally obtaining, in advance, the written authorization of the board. Any pilot or apprentice neglecting or refusing to comply with such requirement as to presence and performance of duties may be subject to association-imposed sanction and have, respectively, his/her

commission, appointment or apprenticeship, as the case may be, either suspended or revoked by board recommendation, depending on the board's judgment and evaluation of the circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1479 (June 2002).

§9115. Enforcement

A. In any case, where a vessel under pilotage shall go aground or collide with another vessel or allide with any object or meet with any marine casualty, or be injured or damaged in any way or in the event of a near-miss of any of the above, the board shall cause to be conducted a preliminary investigation into the casualty or the near-miss to determine if there are any violations of the law or board's rules.

B. When probable cause relating to any event set forth in §9115.A involving a pilot is preliminarily determined, the board may conduct or order an investigation.

C. All board investigations shall be conducted in accordance with R.S. 49:950 et seq.

D. In any case, where a vessel under pilotage is involved in any event set forth in §9115.A, any pilot providing piloting services relating to such vessel shall report such event as follows:

1. report the casualty to the board by whatever means available to the pilot as soon as practical but not later than 24 hours after the occurrence of such event;

2. be available within 24 hours of such event for interview by the board and furnish complete details of the casualty;

3. make a written report regarding such event to the board as soon as practical but not later than 48 hours after such event.

E. Any pilot who shall neglect, or refuse to make any required report to the board as required by these rules, shall be subject to the board-imposed sanctions provided in §9115.J.

F. Any pilot requested or summoned to testify before the board shall appear in accordance with said request or summons and shall make answers under oath to any questions put to him/her related to or in any way connected with the pilot's service.

G. In any case, where the board finds or suspects a violation of the law or applicable regulation, or a violation of its rules, the board may charge the pilot appropriately. If the charge is proven, the board may take action as authorized by R.S. 34:1077. However, this rule shall not abrogate any pilot rights pursuant to all applicable laws. Specific enforcement parameters are included in §9115.J, K, L, M and N herein.

H. When an investigation or any other information source reveals dangerous and/or unsafe conditions and/or conditions that may jeopardize the interests, safety, health, or welfare of the pilots, vessels, cargo, property or individuals, the board may make recommendations to vessel owners, operators, agents or any other involved persons/entities including the Lake Charles Harbor and Terminal District and the U.S. Coast Guard regarding corrective measures.

I. Marine casualties, accident, and required reports are defined in Title 46 Code of Federal Regulations, Part 4 (46 CFR 4). Required reports shall be made to the U.S. Coast Guard by the owners, operators, masters or agents of vessels so involved. This federally-imposed requirement affects all U.S. commercial vessels sailing worldwide and every foreign flag vessel operating on or present within U.S. waters within the pilotage area, as relating to these rules. Hazardous conditions are defined in 33 CFR 160.203 and must be reported to the U.S. Coast Guard. Navigation safety regulations prescribed in 33 CFR 165 shall be followed. Every pilot must immediately report all marine casualties, near-miss incidents, hazardous conditions, and violations of navigation safety regulations to the U.S. Coast Guard and to the board. Action on near-miss reports, absent a showing of violation of navigation rules or negligence, is without attribution toward preventing similar future incidents.

J. After notice and a hearing, the board may, as authorized by R.S. 34:1077, and at their discretion, remove, suspend or reprimand a commissioned pilot, impose civil penalties and/or recommend, to the governor, revocation of the pilot's commission. Suspensions shall not last more than one year, and must be followed by a period of reorientation of not less than 14 days and not to exceed 60 days.

K. The board may take such enforcement action specified in §9115.J, upon a finding that one or more of the following grounds exists:

1. neglecting or refusing to perform any pilot duty;

2. failing to board a vessel at a designated point and time without good cause;

3. threatening to fail to perform or actually failing to perform any duty of a pilot in a manner consistent with established marine customs and practices;

4. performing any duty as a pilot while under the influence of alcohol or drugs;

5. engaging in conduct prejudicial to the safety of the vessel, and/or its officers or crew, and/or its cargo;

6. engaging in conduct prejudicial to a local port, vessel owner or agent, or private shipper or consignee;

7. having a physical or other disability, which inhibits the pilot's ability to board a vessel or perform the duties of a pilot while aboard a vessel;

8. exhibiting incompetency as a pilot;

9. engaging in fraud, perjury, or deceit to obtain or renew a certification or in any other proceeding before the board;

10. engaging in dishonesty, fraud, or negligence in the performance of pilot services;

11. having his or her license cancelled, revoked, or suspended or being denied a license or the renewal of a license for disciplinary reasons by another state or by the United States Coast Guard for any cause, including other restrictions imposed by such other licensing authority;

12. revocation or suspension of, or a voluntary consent decree revoking or suspending, a license, which concerns pilotage duties before any other state or a federal agency;

13. engaging in efforts to deceive or defraud the owner of a vessel or the owner of the cargo or their agents;

14. attempting to usurp, or actually usurping, the authority of the master of a vessel;

15. failing to maintain a current United States Coast Guard license;

16. entering a plea of guilty or nolo contendere or being convicted of a felony or of any other crime, an element of which is dishonesty or fraud, under the laws of the United States, this state, or any other state;

17. failing to notify the board in writing immediately, after the occurrence of any issuance, denial, revocation, or suspension of a pilot's commission, license, or other similar grant of authority by another state or the United States Coast Guard;

18. violating applicable traffic separation schemes and vessel traffic service regulations and any other applicable regulation published by the United States Coast Guard or any other federal, state or local agency;

19. violating any of the Navigational Rules; International-Inland;

20. failing to take cognizance of local notice to mariners and marine information disseminated by the United States Coast Guard;

21. violating any provision of this regulation or any other adopted by the board.

L. In lieu of an adverse action pursuant to this Section, the pilot may tender his/her commission. The board may, for stated reasons, impose such terms and conditions as it deems appropriate as part of its acceptance of the commission tender.

M. The board may suspend a pilot without notice or hearing when it clearly appears from an affidavit of an interested party that further piloting by a commissioned individual poses a threat of immediate injury, loss, or damage before notice and a hearing can be arranged. Notice shall be given to the pilot and the association with all deliberate speed and in the most expeditious manner available. A hearing with notice shall be arranged at the earliest possible date, allowing a reasonable amount of time for the pilot to prepare a defense.

N. The board shall establish policies and procedures to address violations in a formal and consistent manner.

O. Rules of the board may be enforced, in accordance with R.S. 1072, by any court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1480 (June 2002).

§9117. Pilot Charges and Fees

A. Pilotage charges and rates shall be fixed, without board involvement, in accordance with established procedures of the Board of Louisiana River Pilot Review and Oversight, pursuant to R.S. 34:1121 et seq., as may be necessary following disputes.

AUTHORITY NOTE: Promulgated in accordance with R. S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, L.R. 28:1481 (June 2002), amended LR 32:1445 (August 2006).

§9119. Vessel Scheduling System (VSS)

A. The association will act upon all requests for pilot services without delay; provided, they have been notified a minimum of four hours prior to any vessel's expressed intended need of pilot(s).

B. Pilots shall consult and cooperate with the Lake Charles Harbor and Terminal District to assist best operation of the navigable waterway system under the district's jurisdiction.

C. Individuals other than vessel crewmembers may be aboard transiting vessels only at the discretion and approval of the U.S. Customs Service and vessel owners/agents and shall not interfere with pilots' duties and responsibilities.

D. Responses to inquiries voiced to the association or its members from current or prospective Calcasieu River Waterway customers regarding marine services coordination and channel-use priorities shall be coordinated with the Lake Charles Harbor and Terminal District toward developing appropriate responses.

E. Calcasieu River Waterway systemic navigation controls are reserved for federal, state and local authorities. Vessel draft and beam width restrictions deemed necessary by pilots may be imposed only after consulting with, and upon approval of, the Lake Charles Harbor and Terminal District. The U.S. Army Corps of Engineers' (USACE) most current channel surveys and recommendations are generally relied upon in determining if limiting vessel drafts to less than 40 feet may be warranted.

F. The U.S. Coast Guard recognizes and supports state of Louisiana authorized efforts of the Lake Charles Harbor and Terminal District, with local Harbor Safety Committee (HSC) coordination, to safely and efficiently operate the Calcasieu River navigable waterway system. Codification of additional specific Lake Charles Harbor and Terminal District Calcasieu River navigable waterway operating

controls at 33 CFR 165.807 may be appropriate if controls go beyond routine navigation priority determinations.

G. Positive control of Calcasieu River navigation is exercised through vessel traffic scheduling procedures accessible at http://www.lakecharlespilots.com/vtssafety/ or by calling (337) 436-0372 when pilotage is required and otherwise through liaison with the Lake Charles Harbor and Terminal District Harbormaster by calling (337) 493-3620 to request priority transit or to address extraordinary navigation evolutions which might be expected to adversely affect other navigation.

H. The board recognizes and supports the appropriateness of these aforementioned navigation controls and scheduling procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1481 (June 2002).

§9121. Traffic Guidelines

A. Efficient and safe pilotage area traffic movement is dependent upon pilots exercising good professional skill and judgment with respect to visibility, vessel draft, vessel speed, state of tide, wind speed and direction, channel depth, direction and speed of currents, individual vessel maneuvering characteristics, presence of other vessels, and width of channel. Systemic controls may be established and published only after consultation with the Lake Charles Harbor and Terminal District.

B. Meeting and passing situations involving two vessels with combined beams exceeding 50 percent of the available channel width shall be restricted, unless both involved pilots agree that conditions are such that meeting or passing can be accomplished safely.

C. In fog, or any condition that restricts visibility, vessels will not normally be moved until conditions improve to a point where one-mile visibility is available, throughout the route to be transited.

D. All vessels transiting the channel must be ballasted to a condition that keeps the propeller and rudder submerged to a sufficient degree to maintain control of the vessel.

E. Liquefied Natural Gas (LNG) vessels transiting within the pilotage area shall be piloted in accordance with the current U. S. Coast Guard Liquefied Natural Gas (LNG) Vessel Management and Emergency Plan promulgated by the cognizant USCG Captain of the Port. Safety Zones and/or Regulated Navigation Area (RNA) requirements may, from time to time, be established and published at 33 CFR 165.

F. The board recognizes and supports the aforementioned traffic guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1482 (June 2002).

§9123. U.S. Coast Guard Investigations/Proceedings

A. The association shall provide to the board of commissioners copies of all U.S. Coast Guard investigations, notices, and actions pertaining to pilotage area accidents, marine casualties, complaints, and disciplinary actions including federal suspension and revocation proceedings and civil penalty actions.

B. Pilots are required to keep their respective licenses current and to notify the board of any changes or proceedings concerning all appointments, certifications and licenses, which the respective pilots may hold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1482 (June 2002).

§9125. Appeals

A. Any person or organization that has any complaint or other grievance with the actions of the board, or of local pilots, shall submit a written complaint to the board which then shall take any action required by statute and/or these rules.

B. Appeals to board-initiated pilot enforcement proceedings action may be submitted to the board for reconsideration.

C. The owners or operators of any vessel adversely affected by a pilot's decision regarding its movement may request the board to review that decision for ensuring compliance with these rules and sound piloting principles and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1482 (June 2002).

§9127. Nepotism/Equal Opportunity Policy

A. The association and board shall not discriminate in applicant selection or examination in favor of individuals related to pilots or to governing authorities by blood or marriage, or based on race, color, religion, sex, national origin, age, disability, political affiliation or belief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1482 (June 2002).

§9129. Ethics

A. All pilots and board members shall comply with the Louisiana Code of Governmental Ethics Chapter 15 of Title 42 of the Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1482 (June 2002).

§9131. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid and unenforceable for any reason whatsoever, that it may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1482 (June 2002).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXX. River Pilots
Subpart 5. Louisiana Pilotage Fee Commission

Chapter 121. General Rules

§12101. Definitions

Administrator—the Administrator of the Louisiana Pilotage Fee Commission.

Chairman—the Chairman of the Louisiana Pilotage Fee Commission.

Commission—the Louisiana Pilotage Fee Commission.

Hearing Panel—a panel of at least three Commissioners selected by the Chairman to administer a proceeding before the Commission. A Hearing Panel shall consist of an odd number of Commissioners, including at least one at-large Commissioner who shall serve as the Presiding Commissioner of the proceeding and equal numbers of Pilot and Industry Commissioners.

Presiding Commissioner—the Chairman of the Commission or an at-large Commissioner appointed by the Chairman to serve on a Hearing Panel.

Request for Action—a filing with the Commission to review, modify, increase or decrease pilotage fees.

Statute—any provision of the Louisiana Revised Statutes, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:614 (April 2006).

§12102. Object of Rules

A. The purpose of these Rules, adopted pursuant to Louisiana Revised Statute 34:1125(A), is to provide for a simple, orderly, and efficient system of practices and procedures to establish pilotage fees before the Pilotage Fee Commission to the end that justice may be served, the public interest and welfare may be protected, and the determination of pilotage fees by the Pilotage Fee Commission may not be unduly delayed. These Rules shall be liberally construed, with a view towards the purpose for which they were adopted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:614 (April 2006).

§12103. Scope of Rules

A. These Rules shall govern the general procedure for the institution, conduct, and determination of all proceedings before the Pilotage Fee Commission. Except as otherwise provided by Louisiana Revised Statutes 34:1121, et seq., and these Rules including Rule 10, the Commission adopts and incorporates the Louisiana Open Meeting Law, La. R.S. 43:4.1-12, et seq. and the Louisiana Public Records Act, La. R.S. 44:1-44 into its Rules of Practice and Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:614 (April 2006).

§12104. Election, Term of Office, Removal of Officers; Composition of Staff; Special Appointment Powers of the Chairman; Authority to Retain Hearing Master by the Chairman

A. The officers of the Commission shall be a chairman, vice-chairman, and secretary who shall be elected from among the at-large members of the Commission.

1. Officers of the Commission shall be elected by no less than six votes of the members of the Commission.

2. An election of officers of the Commission shall be conducted at the first regular meeting of the Commission that is held after the Governor of the State of Louisiana has made formal appointment of at-large members, beginning with the 2011-2015 term of office. The Administrator of the Commission shall provide members with formal notice of the election at least 30 days in advance of the regular meeting during which the elections are to be held.

3. A candidate for each office from among the at-large member(s) shall be offered by any member of the Commission, whether in person or by proxy, at the regular meeting during which the election of officers is conducted.

4. The term of office for of the Commission officers shall run concurrently with the term of office of the Governor who appointed them, or until their successors are duly elected.

5. Succession of Officers

a. Upon resignation, removal or retirement of the chairman, the vice-chairman shall assume the office of chairman.

b. Upon resignation, removal, or retirement of, or assumption of the office of chairman by the vice-chairman, the secretary shall assume the office of vice-chairman.

c. An incoming replacement at-large member appointed by the Governor shall serve as secretary. In the event that two or more replacement at-large members are appointed simultaneously, a special election shall be held at

the next regular meeting after official appointment to determine the office to be held by each new at-large member.

6. An officer of the Commission may be removed for cause upon motion of any member at a regular or special meeting of the Commission and by majority vote of the Commission, provided that the officer sought to be removed has had the opportunity to speak before the entire membership to address and rebut the grounds asserted in favor of his or her removal from office. Any officer removed by vote of the Commission shall be considered ineligible to serve as officer for the remainder of his or her present term as at-large Commissioner.

B. The Commission staff members shall include an Administrator, and such other staff personnel, including legal counsel, as the Commission may from time to time employ or retain by contract.

C. The Commission may permit one or more of the Commission staff members to also serve as staff for the Board of Louisiana River Pilot Review and Oversight.

D. The Chairman shall exercise his discretion from time to time to appoint committees and their members. On the motion of any member, the Commission may modify or rescind such appointments.

E. The Chairman shall select Commission members to serve on Hearing Panels, as needed and shall have the authority to retain a Hearing Master selected pursuant to the procedures outlined in §12107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:614 (April 2006), amended LR 35:464 (March 2009), effective July 9, 2009.

§12105. Commission Office Location and Hours of Operations

A. The domicile of the Commission, established pursuant to La. R.S. 34:1121.B (11), is East Baton Rouge Parish.

B. The offices of the Commission shall be located at (name of building and street address) in East Baton Rouge Parish until public notice of or change in location within such parish. All meetings of the Commission and its committees will take place in this office unless public notice is given of intent to hold a meeting elsewhere.

C. The offices of the Commission shall be open from 8:00 a.m. until 4:30 p.m., Monday through Friday, except official state holidays.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:614 (April 2006).

§12106. Administrator; Employment; Duties and Responsibilities

A. In accordance with La. R.S. 34:1122.A(2), the Commission shall employ an Administrator whose compensation shall be fixed by the Commission.

B. The Administrator shall be the chief administrative officer of the Commission. He shall perform his duties, responsibilities and functions under the supervision and control of the Commission. The Administrator shall also direct and be responsible for all management and finance matters of the Commission. In such capacity, he shall be responsible for accounting and budget control, procurement and contract management, data processing, consulting services, property control, personnel management, establishment and oversight of a Commission website and grants management for the Commission, except as otherwise specifically provided in these rules.

C. The Administrator shall also employ, remove, assign, and promote such personnel as is necessary for the efficient administration of the Commission and the performance of its powers, duties, functions, and responsibilities. The Administrator shall exercise all powers and authority granted to him in these rules subject to the overall direction and control of the Commission. The Administrator shall perform such additional duties and functions as are assigned by the Commission.

D. For purposes of the Public Records Law, the Administrator shall be the official custodian of all records of the Commission and all filings with the Commission. The Administrator shall receive and respond to all requests for public records of the Commission.

E. The Administrator shall whenever necessary or appropriate certify copies of official documents in his custody; provide service of decisions, recommendations, orders, subpoenas, proposed rules and notices issued by the Commission, Hearing Panel and Hearing Master, and perform other duties as may be assigned by the Commission.

F. The Administrator shall assess the cost of all hearings and expenses incurred by the Commission in a proceeding equally on the pilot association and the shipping industry to which it relates in accordance with the procedures established by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:615 (April 2006).

§12107. Hearing Master Selection Process

A. The Commission may assign contested dockets or such other matter as it deems appropriate to a Hearing Master.

B. A Hearing Master shall satisfy the following qualifications:

1. licensed to practice law in the state of Louisiana;

2. a member in good standing of the Louisiana State Bar Association;

3. no previous or current representation of any entity with respect to pilotage fee issues;

4. no relationships or interests likely to affect impartiality or create an appearance of partiality and commitment to disclose such should they arise; and

5. a retired judge who previously served at the district, appellate or supreme court level and included in a list of retired judges available to serve and supplied by the Louisiana Supreme Court (*Retired Judges List*).

C. When a proceeding has been assigned to a Hearing Master, the Administrator shall provide each party to the proceeding a copy of the Retired Judges List. The parties shall meet and try to agree on a Hearing Master candidate from the Retired Judges List. If there is agreement, within 10 days of receipt of the Retired Judges List, the parties shall file a joint report to the Commission that provides the name of a Hearing Master candidate that satisfies the qualifications of Subpart B.1 upon which all parties agree.

D. If the parties are unable to agree, parties aligned with Pilot interests (*Pilots*) and parties aligned with Industry interests (*Industry*)shall exchange a list of 3 Hearing Master candidates that satisfy the qualifications of Subpart B.1 within 10 days of the receipt of the Retired Judges List. Pilots and Industry shall have the right to strike 2 names from the list of the opposing group and the remaining names on the two lists shall be submitted to the Commission in a joint report filed no later than 15 days from the receipt of the Retired Judges List.

E. The Commission shall select the candidate upon which there is agreement, or one of the candidates from the lists submitted in the joint report from Pilots and Industry, or reject all candidates and refer the selection to the at-large Commissioners.

F. When the Hearing Master selection has been assigned to the at-large Commissioners, they shall select 3 Hearing Master candidates that satisfy the qualifications of Subpart B.1 and were not previously selected by Pilots and Industry. The candidates chosen by the at-large Commission members shall be submitted to the parties. Within 10 days, the parties shall provide the Commission with an agreed to candidate from the list provided by the at-large Commissioners, or Pilots and Industry shall exercise the right to each strike one of the names and report the name so stricken to the Commission. The at-large Commissioners shall then make the final Hearing Master selection from the remaining names.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:615 (April 2006).

§12108. Ex Parte Communications

A. An at-large member of the Commission shall not have any ex parte communication with any member of any pilot association or with any member of the nominating industry groups or any other person or entity that has an interest in any issue pending or that may come before the Commission with respect to such issues except for educational purposes.

B. The general policy of the Commission will be to hold public hearings at which all facts pertaining to pilots, shippers, vessels, agents and related interested parties may be adduced for benefit of the entire Commission so as to minimize the need for ex parte educational presentations.

1. If an ex parte educational presentation is made:

a. adequate notice and opportunity to attend shall be afforded to both pilot association and industry Commission members;

b. adequate notice shall be provided to the non-presenting interest group and/or parties, which shall be afforded an opportunity to attend and make an educational presentation on the same topic at a later date;

c. only five or fewer Commission members may be present.

C. Ex parte communication with the Hearing Master by a Commissioner, Commission staff, any member of any pilot association, any member of the nominating industry groups or any other person or entity that has an interest in any proceeding pending before the Hearing Master regarding the issues under consideration in such proceeding is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:615 (April 2006).

§12109. Public Records; Copies Available to Public

A. All records of the Commission, except as provided in these Rules, including Rule 10, whether received or generated in the discharge of any of its functions shall be public records which shall be available to members of the public upon compliance with the provisions of the Public Records Law, La. R.S. 44:1, et seq.

B. Copies of any public records of the Commission may be purchased from the Administrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:616 (April 2006).

§12110. Public Records; Exception for Confidential, Trade Secret and Proprietary Matters

A. A pilot association, a member of industry, or any other person with a substantial interest submitting documents to the Commission, including the submission of relevant records of entities or persons not party to a proceeding, may request that the Commission maintain such documents as confidential information and exempt from public disclosure, upon a showing that they contain trade

secrets or proprietary or confidential information. Records found by the Commission to be trade secret, proprietary or confidential shall be kept confidential and exempt from public disclosure.

B. Each request for confidentiality must allege that the document contains confidential or proprietary matters or trade secrets and shall include all of the following:

1. a statement as to whether the request for confidentiality is based upon confidential, proprietary or trade secret information;

2. a list or an index identifying each separate record or category of records and stating the legal authority under which each separate record should be determined to require confidentiality;

3. a statement of the measures taken by the requester to guard against undesired disclosure to others of each record or document;

4. a statement of the extent to which the document or record has been disclosed to others and the precautions against further disclosure taken in connection therewith;

5. a certification that the requester has personal knowledge of the pertinent facts and that all representations of facts are true and correct to the best of the requester's knowledge.

C. Each request shall be submitted with two versions of the information or records; one version to be clearly marked "confidential," and the other to be clearly marked "public."

1. The confidential version shall show all information and clearly indicate what confidential information is excised from the public version.

2. The public version shall have the confidential information excised and clearly show that confidential information has been excised.

3. Blacking out confidential portions of otherwise public records is permissible, provided that the blacked-out portions are clearly identified in both confidential and public versions.

D. Such a request submitted with respect to information filed in a docketed proceeding assigned to a Hearing Panel or Hearing Master may be made by a Motion for Protective Order and decided by the Hearing Panel or Hearing Master, subject to appeal to the Commission, pursuant to Rule 33. Otherwise, the Commission shall make the final decision on any such request supported by reasons.

E. A hearing shall be held to decide the request if there is an objection to the confidential treatment by a party in interest or if the Commission, Hearing Panel or Hearing Master determines that a hearing is necessary.

F. Only members of the Commission, the Hearing Panel or the Hearing Master, as the case may be, shall have access to the documents or records submitted for determination of their confidentiality, except other parties may review pursuant to a confidentiality agreement.

G. Prior to filing confidential information, a party may file a motion for a declaratory ruling that certain types of information or specific information should be protected pursuant to this Rule. Any decision on such motion shall be considered a final decision subject to appeal.

H. Individual compensation, directly or indirectly related to the performance of official pilot duties, paid to pilots commissioned in Louisiana, and contained in the business and tax records of a pilot association or other business performing pilot-related activities, shall not be considered confidential information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:616 (April 2006).

§12111. Assessment of Fees to Fund Administrative and Operational Costs

A. The ordinary and necessary operating and administrative expenses of pilotage included in pilotage fees and rates as provided by La. R.S. 1122(B)(1) shall include the reasonable administration and operational costs of the Commission (*Commission Operational Costs*).

B. For purposes of administrative ease, the Commission Operational Costs shall be recovered through a surcharge imposed on each vessel entering and departing from the Mississippi or Calcasieu Rivers and included in the tariffs of the Associated Branch Pilots for the Port of New Orleans (the *Bar Pilots*) and the Associated Branch Pilots for the Port of Lake Charles (*Lake Charles Pilots*). The Bar Pilots and the Lake Charles Pilots shall collect the surcharge through a line-item charge included on invoices, shall remit all surcharge collections monthly to the Commission with a collections report and shall be subject to annual audit and adjustment.

C. The surcharge shall be imposed and adjusted annually through proceedings before the Commission with full rights of participation by all parties in interest and shall be based on the number of vessels projected to enter the Mississippi and Calcasieu Rivers and on the budgeted Commission Operational Costs for the year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:616 (April 2006).

§12112. Sessions of the Pilotage Fee Commission

A. The Chairman shall call regular meetings of the Commission. At least one regular meeting of the Commission shall be called by the Chairman every quarter, at such times and places as the Commission shall designate for the purposes of public hearing, consideration of and rulings on Requests for Action, motions and other filings, and transacting all other necessary business.

B. Special meetings may be held as allowed by La. R.S. 34:1125(C).

C. The agenda for Commission meetings shall be posted at the Commission and on the Commission website not less than 5 days prior to the meeting or hearing date. Supplements and/or modifications to the agenda shall be posted not later than twenty-four (24) hours prior to the start of a Commission meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:617 (April 2006).

§12113. Transcripts of Proceedings Before the Commission

A. The Administrator shall designate an official reporter to tape and make available for transcription a taped, verbatim record of each Commission meeting. Interested parties can obtain tapes or transcripts upon request and payment of the costs of production or transcription. The tapes and any transcripts produced shall be part of the official public records of the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:617 (April 2006).

§12114. Conduct and Decorum

A. Conduct. Every party, witness, attorney or other representative shall comport himself in all proceedings with proper dignity, courtesy and respect for the Commission, the Hearing Panel, the Hearing Master, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical and professional behavior prescribed for attorneys at law by the Louisiana State Bar Association. Any party, witness, attorney or other representative may be excluded by the Commission, the Hearing Panel or Hearing Master from any meeting or hearing for such period and upon such conditions as are just for violation of this rule, or may be subject to such other just, reasonable, and lawful disciplinary action as the Commission may prescribe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:617 (April 2006).

§12115. Computation of Time

A. Computing Time. In computing any period of time prescribed or allowed by these rules, by order of the Commission, Hearing Panel or Hearing Master, or by any applicable statute, the day on which the designated period of time begins to run shall not be included. Furthermore, a designated time period shall not be deemed to expire on a Saturday, Sunday or legal holiday, but rather shall expire on the next day which is not a Saturday, Sunday nor a legal holiday.

B. Extensions. Unless otherwise provided, the time for filing any pleading, may, but shall not necessarily, be extended by order of the Chairman, Hearing Panel or Hearing Master, upon written motion duly filed with the Administrator prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need therefore is not caused by the neglect, indifference or lack of diligence of the party making such motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:617 (April 2006).

Chapter 122. Parties

§12201. Classification of Parties

A. Parties to proceedings before the Pilotage Fee Commission are applicants, petitioners, respondents and intervenors. Regardless of errors in their designation of themselves in their pleadings, the Commission may align parties in accordance with their interest in the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:617 (April 2006).

§12202. Parties in Interest

A. Any party with a substantial interest in a proceeding before the Commission may participate provided that notice of intervention, protest or support is filed with the Commission within 25 days or such other reasonable period of time directed by the Commission (but not less than 10 business days) following published notice of the filing in the official journal of the state as provided for in Rule 27.

1. All appearances shall be subject to a motion to strike upon a showing that the party has no substantial interest in the matter.

2. A decision by the Commission to strike a party is a final decision as to that party and the decision is appealable.

3. Unless otherwise provided by law, any public official, agency or department of the State of Louisiana or any of its political subdivisions and every civic or trade organization shall be permitted to appear in any proceeding whether as a formal intervenor or otherwise, and present any relevant and proper testimony and present any evidence bearing upon the issues involved in the particular proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:617 (April 2006).

§12203. Appearances Before the Commission Personally or by Representative

A. Any person may appear personally or through an attorney at law authorized to practice law before the highest court of any State. A natural person may appear in his own behalf. A corporation, partnership or association may appear and be represented by any officer, partner, member, full-time employee, or other person if authorized to so appear by the Commission. In all proceedings for the determination, establishment, interpretation or enforcement of tariffs, rates, charges or any classification, rule or regulation appertaining

thereto, a party shall appear and be represented by a person who is licensed to practice before the highest court of any state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:618 (April 2006).

Chapter 123. Pleadings

§12301. Classification of Pleadings

A. Pleadings filed before the Louisiana Pilotage Fee Commission shall be Requests for Action, petitions, notices of intervention, protest or support; answers, motions and responses, and exceptions. Regardless of any error in the designation of a pleading by the pleader, it shall be accorded its true status in the proceeding in which it is filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:618 (April 2006).

§12302. Form and Content of Pleadings

A. Typewritten or Printed. All pleadings filed in any proceeding shall be typewritten. The impression shall be on one side of the paper, and lines shall be double-spaced, except that long quotations, tables or schedules of data, etc., may be single-spaced, and indented. Any papers will be accepted as typewritten if produced by an copying or duplicating process which produces a clear black image on white paper (any attached exhibits may contain color images). The paper shall be unglazed, and the printing shall be in clear type.

B. Size of Papers. All papers, except exhibits, shall not exceed a width of 8-1/2 inches and a length of 11 inches, and shall have inside margins not less than one inch wide. Whenever practical, all exhibits of a documentary character shall conform to said requirements of size and margin.

C. Signature and Address. The original copy of every pleading shall be signed in ink by the party filing the paper, or by the officer, attorney or other representative who appears for such party. Pleadings shall contain the address, telephone number, fax number and email address of the party or representative filing the paper or, if he is represented by an attorney, the name, business address, state bar number, fax number, email address and telephone number of such attorney.

D. Other Requirements. All pleadings shall contain:

1. the name of the party on whose behalf the pleading is filed;

2. a concise statement of the relevant facts relied upon by the pleader;

3. separately numbered paragraphs, when appropriate;

4. when appropriate, each statute, court decision, agency rule or regulation relied upon;

5. a prayer stating the type of relief, action or order desired by the pleader;

6. any other matter required by statute or rule;

7. a certificate of service, when service is required; and

8. where appropriate, the caption or heading should be similar in format to and shall include the following information:

PILOTAGE FEE COMMISSION

STATE OF LOUISIANA

IN THE MATTER OF DOCKET NO.

*

*

*

_____

(Title of Pleading)

E. Request For Action.

1. In addition to the other requirements contained in the rules, if the pleading is a Request for Action that seeks an increase in rates or fees, it shall not be considered effectively filed unless it shall have appended thereto the notice for publication required by Rule 27, the sworn testimony, affidavits and exhibits representing applicant's case in chief and upon which the party will rely in support of its request for an increase in rates or fees and a proposed schedule of the rates or fees designed to effect the proposed increase. For the purpose of commencing the one year period in La. R.S. 34:1122 D(9), a Request for Action relative to pilotage fees shall be in proper form in accordance with the requirements set forth in these rules.

2. A Request for Action that seeks a decrease in rates or fees shall not be considered effectively filed unless it shall have appended thereto the notice for publication required by Rule 27, and include a statement setting forth the substantial interest of the party filing the request, a description of the rates at issue, and the basis for the proposed decrease in rates.

F. Initial Filings

1. In conjunction with its filing of a Request for Action or other initial pleading in a proceeding, each party shall designate one "contact" person who shall serve as the party's agent for receiving mailings and other communications from the Commission regarding the proceeding and other parties of record in the proceeding and shall provide the "contact" person's mailing address, telephone number, email address, and fax number.

G. File-Stamped Copies

1. Parties requesting the return of file-stamped copies of a pleading must provide the additional copies, as well as a stamped, self-addressed envelope for that purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:618 (April 2006).

§12303. Motions

A. Every motion relating to a pending proceeding shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds therefore. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be filed with the Administrator for consideration by the Commission, Hearing Panel or Hearing Master at the earliest practicable time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:618 (April 2006).

§12304. Amendments

A. Any pleading may be amended at any time upon motion and following approval by the Commission, the Hearing Panel or the Hearing Master, provided that a Request for Action or other pleading upon which notice has been published shall not be amended so as to broaden the scope thereof without additional notice, opportunity for response and compliance with the procedural requirements of a new filing. Additionally, amendments to Requests for Action shall, if the Commission deems necessary, be treated as a new filing and subject to the same procedural requirements regarding sworn testimony as an initial application. An intervenor may at any time adopt the amendments proposed in the amended Request for Action or other pleading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:619 (April 2006).

§12305. Incorporation by Reference of Commission Records

A. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the Commission. Testimony, exhibits, and other matters of a like nature are excepted from this Rule, unless with specific approval of the Commission, Hearing Panel or the Hearing Master and this Rule shall not relieve any applicant of the necessity of alleging and providing in detail, where required, the facts supporting its request for an increase or decrease in pilot's fees and rates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:619 (April 2006).

§12306. Refiling of Requests/Petitions

A. When any Request for Action has been heard by the Commission and has been denied, the Commission will not entertain a further application from the same applicant covering identical or similar situations, until the expiration of six months from the date of such a grant or denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:619 (April 2006).

Chapter 124. Docketing and Notice

§12401. Filing of Documents

A. Any filings before the Commission shall be made with the Administrator. Filings shall be by hand delivery, mail, electronically when electronic access is available, or if less than 25 pages via facsimile transmission. Unless otherwise provided, all filings shall be deemed filed on the date received by the Administrator. Receipt of an electronic or facsimile transmission on or before the due date shall be considered timely filed, provided the original document is received within five working days of the receipt of the facsimile or electronic transmission.

B. A filing shall be deemed filed only when actually received by the Administrator in proper form and accompanied by a filing fee, if any, as set forth in the Fee Schedule adopted by this Commission. All such filings shall be in the form of an original, twelve (12) conformed hard copies and a compatible computer version on disk or CD.

C. After a matter has been docketed by the Administrator, all subsequently filed pleadings and/or documents shall be filed with the original plus one copy.

D. Filings mailed to the Administrator should be addressed as follows:

Louisiana Pilotage Fee Commission

_____

Baton Rouge, Louisiana, _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:619 (April 2006).

§12402. Administrator; Docketing of Filings

A. Upon the filing of any pleading with the Administrator, he shall forthwith examine it to determine if it is timely and in compliance with Rule 20. If it is found to be untimely, the Administrator shall return the pleading to the person making it, with a statement of the reasons for rejecting same and requesting that it be refiled with a motion to permit a late filing. If the filing is found to be noncompliant with Rule 20, the Administrator shall return the filing to the person making it, along with a statement of the reasons for rejecting same. The person who filed shall thereafter have the right to file a corrected pleading. In no event shall the filing of a corrected pleading be permitted to delay any hearing unless the Commission, Hearing Panel or Hearing Master, as appropriate, determines that such delay is necessary in order to prevent injustice or to protect the public interest and welfare, and provided further that the failure of the Commission to return such pleading shall not constitute a waiver by the Commission or any proper party to object at a later time to the sufficiency or timeliness of the pleading. Any determination made under this rule shall be

subject to review by the Commission upon written request by the party affected.

B. At the time a pleading or other document which initiates a new proceeding is received by the Administrator, and found to be in compliance with Rule 20, it shall be filed and assigned a docket number. That docket number shall be used on all subsequent pleadings, such as interventions, answers, motions, amendments, supplements, and notices, filed in the matter.

C. The Administrator shall maintain a separate docket for each proceeding which shall be accessible through electronic means when available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:619 (April 2006).

§12403. Notice; Service

A. By Publication

1. Notice of all Requests for Action or other filings by which new proceedings are initiated before the Commission shall be published by the applicant in the official journal of the state and of East Baton Rouge Parish. Such notice shall include the name and address of the party making the filing; the name, address, email address and telephone number of his attorney or other representative, the docket number assigned by the Administrator, a concise statement of the action sought and the date by which a party who desires to participate in the proceeding must file a notice of intervention, protest or support with the Administrator as provided in Rule 17.

2. The Administrator shall publish weekly, or more often if necessary, on the Commission website a notice of Requests for Action or other filings by which proceedings shall have been initiated before the Louisiana Pilotage Fee Commission since the last previous publication of notice. Said notice shall include the notice to be published in the official journal of the state and in the parish in which the Commission is domiciled. The notice provided by the Administrator shall also provide that notices of intervention, protest or support shall be served upon the party who instituted the proceeding by mail, and that if no notice of intervention shall have been received by the Administrator within a twenty-five (25) day period (or such other period as referenced in Rule 17.A) from the date of publication in the state's official journal, the proceeding will be processed and determined upon an uncontested docket, provided that the Commission shall have the right, power and duty to inquire into the public interest in any proceeding whether contested or uncontested.

3. The Administrator shall also post on the Commission website notices of the dates of scheduled Commission meetings, Commission meeting agendas and the dates of scheduled hearings.

B. By Mail. Where service other than by publication is permitted or required under these Rules, the Administrator shall mail the same, certified or registered mail, to the last known place of address of the person entitled to receive such notice.

C. Personal Service. All notices of which personal service may be required by statute or rules shall be addressed to the person entitled thereto, and shall set forth the names of all other parties, the nature and subject matter of the proceeding, the time and place of hearing, and any other matter required by law, and may be made by the sheriff of the parish of the party served, or by a duly authorized employee or official of the Commission, who shall make a return thereon.

D. Service of Pleadings. A copy of any pleading filed by any party in any proceeding subsequent to the institution thereof, shall be mailed or otherwise delivered (including electronic delivery) by the party filing the same to every other known party of record. If any party has appeared in the proceeding by attorney or other representative authorized under these rules to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the Commission, striking the pleading from the record.

E. Certificate of Service. A certificate by the party, attorney or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such service. The form of the certificate should be as follows.

> I hereby certify that I have this _____ day of _____, 20___, served copies of the foregoing pleading upon all other known parties of this proceeding, by (here state the manner of service).
>
> Signature

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:619 (April 2006).

§12404. Contested Proceedings

A. When a notice of intervention is timely filed with the Administrator after the publication of notice as provided in Rule 27, the Administrator shall assign such case to the contested docket and notify the parties of the time and place of the initial status conference. The Commission may assign the matter to a Hearing Panel or a Hearing Master to administer the proceeding pursuant to these rules subject to its review. At the initial status conference, the Hearing Panel or Hearing Master shall confer with the parties or their counsel and establish a procedural schedule, including a hearing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:620 (April 2006).

§12405. Uncontested Proceedings

A. Where no notice of intervention has been timely received by the Administrator after the publication of notice as provided in Rule 27, the Administrator shall assign such case to the uncontested docket. All cases on the uncontested

docket shall be processed as expeditiously as practicable and placed on the agenda of the next Commission meeting for appropriate consideration. Nothing in this Rule shall relieve any party of the burden of proof imposed by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:620 (April 2006).

Chapter 125. Discovery

§12501. Forms of Discovery Permitted

A. Formal discovery shall be conducted in proceedings in accordance with the Louisiana Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:620 (April 2006).

§12502. Filing of Discovery Requests and Responses

A. Discovery requests and responses shall not be filed with the Commission. Rather, the originals of the requests and responses shall be maintained by the parties, who shall serve as the official custodians of the documents, unless:

1. filing is ordered by the Commission, Hearing Panel, or the Hearing Master;

2. a party files a motion to compel discovery or a motion to strike discovery requests, in which case the moving party shall file the pertinent discovery pleadings with the motion;

3. the requests and responses are to be used or placed into evidence at any hearing in the proceeding or with regard to any motion or exception filed in the proceeding.

B. Notices of depositions shall be filed into the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:620 (April 2006).

§12503. Service of Discovery on all Parties

A. Any party propounding or responding to discovery requests shall mail copies of the requests or written responses to all parties of record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:620 (April 2006).

§12504. Motion for Protective Order

A. A motion for protective order, or other request to limit discovery, may include a request for confidentiality pursuant to Rule 10. In the event a protective order is issued, or discovery is otherwise limited, the Commission, Hearing Panel or Hearing Master may designate in writing as confidential that portion of the record necessary to enforce the provisions of the protective order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:621 (April 2006).

§12505. Taking of Depositions

A. The taking of depositions in any proceeding shall be governed by the La. Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:621 (April 2006).

Chapter 126. Prehearing Procedures

§12601. Scheduling and Prehearing Conferences

A. Upon written notice and pursuant to La. R.S. 34:1122 (D)(3), a scheduling conference will be conducted by the Commission, Hearing Panel or Hearing Master between the parties or their attorneys or other representatives to establish a schedule for the proceeding, which may include discovery, motions, briefs, a hearing on the merits and proposed findings of fact and conclusions of law.

B. Following the scheduling conference, the Commission, Hearing Panel or Hearing Master shall serve on all parties a scheduling order which details the decisions and deadlines made at the scheduling conference.

C. Upon written notice by the Commission, Hearing Panel or Hearing Master in any proceeding, the parties or their attorneys or other representatives may be directed to meet and confer together by telephone or otherwise, before a specified time, prior to the hearing, and prior to the setting of a date for a hearing, for the purpose of formulating issues and considering:

1. the simplification of issues;

2. the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, to the end of avoiding the unnecessary introduction of proof;

4. the simplification of procedures at the hearing;

5. the limitation, where possible, of the number of witnesses;

6. the time required for presentation;

7. such other matters as may aid in the simplification of the proceedings and the disposition of the matters in controversy.

D. Action taken at the conference shall be recorded in an appropriate statement by the parties, to be filed with the Commission, Hearing Panel or Hearing Master before the date specified. No matter for which a pre-hearing conference has been ordered by the Commission, Hearing Panel or Hearing Master shall be set for hearing unless the pre-hearing statement has been timely filed, unless the failure to do so is for good cause shown in writing. Applicants and petitioners shall bear the responsibility for filing the pre-hearing statement, and the failure of any party to cooperate in the preparation of it may result in his dismissal from the proceeding. In the event of disagreement over the terms of

the pre-hearing statement, any party may file a separate statement setting forth the grounds for such disagreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:621 (April 2006).

§12602. Postponements

A. A motion for postponement shall be filed in writing prior to the date set for the hearing and shall set forth under oath the specific grounds upon which it is sought. The motion may be granted by the Commission, Hearing Panel or Hearing Master for good cause shown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:621 (April 2006).

§12603. Consolidations and Joint Hearings

A. A motion for consolidation of two proceedings, if made prior to hearing, shall be in writing, signed by the movant, his attorney or representative, and filed with the Administrator prior to the date set for hearing. No two or more proceedings shall be consolidated or heard jointly without the affirmative consent of all parties to all of such proceedings, and by consent of the Commission, unless the Commission shall find that the two or more proceedings, involve common questions of law and fact, and shall further find that separate hearings would result in unwarranted expense or delay or substantial injustice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:621 (April 2006).

Chapter 127. Hearings

§12701. Place and Nature of Hearings

A. All official hearings conducted in any proceeding shall be open to the public, unless the Commission, Hearing Panel or the Hearing Master decides that a closed hearing is necessary to protect information that is exempt from public disclosure under the Public Records Act, La. R.S. 44:1 et seq. and/or Rule 10. A hearing shall remain closed only for the period of time necessary to consider the confidential information. All hearings shall be held in Baton Rouge, Louisiana, unless the Commission shall designate another place of hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:621 (April 2006).

§12702. Order of Procedure

A. The Commission, Hearing Panel or Hearing Master shall direct all parties to enter their appearances on the record. In all proceedings, the petitioner or applicant shall open. Where several proceedings are heard on a consolidated record, the Commission, Hearing Panel or Hearing Master shall designate who shall open and close and at what stage intervenors shall be permitted to offer evidence. After all parties have completed the presentation of their evidence and before the issuance of an Order or final recommendation, the Presiding Commissioner or Hearing Master may call upon any party for further material or relevant evidence upon any issue, which, in the discretion of the Presiding Commissioner or Hearing Master, may be presented at further public hearing after notice to all parties of record and with the opportunity for all parties to respond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:621 (April 2006).

§12703. Recording of Hearings; Copies; Transcripts

A. Consistent with the protections provided in these Rules for confidential information, the Administrator shall make or cause to be made an official recording of each hearing. Copies of hearing tapes shall be available for purchase by anyone from the Administrator.

B. Consistent with the protections provided in these Rules for confidential information, a verbatim transcript of an evidentiary hearing shall be made when requested by a party. Requests for a transcript shall be in writing and submitted to the Administrator. The Administrator will furnish an estimate of the transcription costs to the requester. The estimated costs must be paid before the recording is transcribed. Actual costs must then be paid in full before delivery of the transcript.

C. As portions of the proceeding are being transcribed, the original copy of the transcript thereof shall be filed into the record.

D. Copies of records in hearings may be purchased from the Administrator.

E. Proposed corrections to the transcript of a hearing may be offered within ten days after public notice of the transcript being filed, with service of such proposed corrections on all parties. Proposed changes shall indicate the specific word changes and the name and address of the party making the proposal. If the suggested corrections are not objected to, the Commission, Hearing Panel or Hearing Master may direct the corrections to be made and the manner of making them. In the event the parties disagree on proposed corrections, the matter may be heard by the Commission, Hearing Panel or Hearing Master which shall then determine the manner in which the transcript shall be changed, if at all.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:622 (April 2006).

§12704. Formal Exceptions

A. Formal exceptions to rulings of the Commission, Hearing Panel or Hearing Master issued during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall make known to

the Commission, Hearing Panel or Hearing Master the action which he desires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:622 (April 2006).

§12705. Briefs

A. Briefs shall be filed only when requested or permitted by the Commission, Hearing Panel or Hearing Master. They shall conform to the rules herein provided for form of pleadings. The points involved shall be concisely stated, the evidence in support of each point shall be briefly summarized, and the argument and authorities shall be organized and directed to each point in a concise and logical manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:622 (April 2006).

Chapter 128. Evidence

§12801. Admissibility in General

A. Any evidence which would be admissible under the general statutes of the State of Louisiana, or under the rules of evidence governing proceedings in matters not involving a trial by jury in the Courts of the State of Louisiana, shall be admissible before the Louisiana Pilotage Fee Commission. Other evidence may be admitted by the Commission, Hearing Panel or the Hearing Master if it is at all probative and relevant, provided the substantive rights of all parties are protected. The rules of evidence shall be applied liberally in any proceeding to the end that all needful and proper evidence shall be conveniently, inexpensively and speedily heard while preserving the substantive rights of the parties to the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:622 (April 2006).

§12802. Prepared Testimony

A. In all proceedings, and after service of copies upon all parties of record at such time as may be designated by the Presiding Commissioner or Hearing Master, the prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read, or received as an exhibit, upon the witness' being sworn and identifying the same as being true and correct. Such witness shall be subject to cross examination and the prepared testimony shall be subject to a motion to strike in whole or in parts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:622 (April 2006).

§12803. Limitations on Number of Witnesses

A. The Commission, Hearing Panel or Hearing Master shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:622 (April 2006).

§12804. Exhibits

A. Form. Exhibits of documentary character shall be of such size as not to unduly to encumber the files and records of the Commission. Wherever practicable, the sheets of each exhibit shall be not more than eight and one-half inches by eleven inches in size and numbered, and there shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues in a particular proceeding.

B. Tender and Service. The original of each exhibit offered shall be tendered to the Commission, Hearing Panel or Hearing Master identification and one copy to each other party of record or his attorney or representative.

C. Excluded Exhibits. In the event an exhibit has been identified, objected to and excluded, the Presiding Commissioner or Hearing Master shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the Presiding Commissioner or Hearing Master with a ruling, and shall be included in the record, for the purpose only of preserving the exception.

D. After Hearing. Unless specifically directed by the Commission, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:622 (April 2006).

§12805. Offer of Proof

A. When testimony is excluded by ruling of the Commission, Hearing Panel or Hearing Master, the party offering such evidence may be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the Commission or on appeal. The Commission, Hearing Panel or Hearing Master may ask such questions of the witness as necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:623 (April 2006).

§12806. Evidence in Uncontested Proceedings

A. In any uncontested proceeding, the Commission, Hearing Panel or Hearing Master, as appropriate, shall receive, without regard to the legal rules of admissibility, any evidence of a form and character which would ordinarily be relied upon by a prudent person in an ordinary business transaction, including, without limitation, affidavits, documents and other forms of hearsay testimony deemed by him to be reliable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:623 (April 2006).

§12807. Subpoenas

A. Subpoenas for the attendance of witnesses from any place in the State of Louisiana, or for the production of books, papers, accounts or documents at a hearing in a pending proceeding, may be issued by the Commission upon its own motion, or upon the written motion of a party showing that there is good cause for the issuance of same.

B. Motions for subpoenas to compel the production of books, papers, accounts or documents shall be verified and shall specify as nearly as may be possible, the books, papers, accounts or documents desired and the material and relevant facts to be proved by them. No such subpoena shall be issued unless the Commission, Hearing Panel or Hearing Master shall determine that the matter sought is relevant material and necessary and that the production of such books, papers, accounts or documents will not result in unnecessary harassment, imposition, or undue inconvenience or expense to the party to be required to produce the same. No subpoena shall issue for material alleged to be of a trade secret, proprietary or confidential nature unless it be shown after hearing of arguments on the same that no other alternative, such as a protective order, will accomplish a result consistent with the interests of all parties and the public.

C. Any party requesting the issuance of subpoenas, must identify, in writing, each individual to be served or the agent for service of process for each entity to be served, as well as an accurate address for service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:623 (April 2006).

Chapter 129. Hearing Panels and Hearing Master

§12901. Hearing Panel and Hearing Master Authority

A. Except as otherwise provided, hearings will be conducted by the Commission, Hearing Panel or Hearing Master. The Hearing Panel and Hearing Master shall have authority to:

1. administer oaths and hold hearings;

2. issue subpoenas for the attendance of witnesses at depositions and hearings;

3. issue subpoenas for the production of documents and other evidence at deposition and hearings.;

4. enforce subpoenas whenever any person summoned neglects or refuses to obey such summons, or to produce documents or other evidence, or to give testimony, as required;

5. schedule status conferences and prehearing conferences for the purpose of defining issues, setting hearing dates and prehearing deadlines, and for addressing such matters as the Hearing Master deems appropriate;

6. schedule and regulate the course of hearings, maintain decorum, and exclude from hearings any person engaging in contemptuous conduct or otherwise disrupting the proceedings;

7. grant filing extensions and hearing continuances;

8. compel discovery and impose sanctions for failure to comply with discovery rules and orders;

9. rule upon amendments to pleadings;

10 examine witnesses;

11. fix fees and mileage of witnesses;

12. make evidentiary rulings, including the qualification of expert witnesses;

13. accept testimony and exhibits into evidence;

14. take official notice of (a) proceedings, determinations, order, or other actions before or by the Commission, (b) judicially cognizable facts not subject to reasonable dispute that are generally known within the jurisdiction of the Commission or capable of accurate and ready determination by resort to sources whose accurate cannot reasonably be questioned, and (c) generally recognized technical or scientific facts within the Commission's specialized knowledge. Parties shall be provided reasonable notice either before or during the hearing of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed;

15. direct the presentation or submission into the record of evidence or testimony not otherwise presented or submitted by any party to the proceeding, subject to objection by any party;

16. require the filing of memoranda of law and the presentation of oral argument with respect to any question of law or application of law to facts upon which a ruling is required;

17. require the filing of proposed findings of fact and conclusions of law;

18. receive offers of proof;

19. prepare final recommendations;

20. render interlocutory rulings upon all motions, exceptions, and other preliminary matters filed by the parties;

21. recess any hearing from day to day.

B. If a member of the Hearing Panel or the Hearing Master dies, becomes disabled or withdraws or is removed from employment of the case at any time before the final decision thereof, the Commission may appoint another Hearing Panel member or Hearing Master, who may perform any function remaining to be performed without the necessity of repeating any proceedings theretofore had in the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:623 (April 2006).

§12902. Commission Review of Interlocutory Rulings by the Hearing Panel or Hearing Master

A. Every ruling by the Hearing Panel or Hearing Master shall be subject to review by the Commission upon its own motion. The Commission may also, upon its own motion, assert its original and primary jurisdiction and consider any question or issue pending before a Hearing Panel or the Hearing Master, including withdrawing the entire matter from the Hearing Panel or Hearing Master at any stage of the proceeding prior to the issuance of the required final recommendation.

B. Any party may apply for immediate review of an interlocutory ruling, which may be obtained only upon a showing of irreparable injury, as defined in Louisiana jurisprudence. The procedure for such a request is as follows.

1. Within ten (10) days of the issuance of the interlocutory ruling, a party may file a motion for immediate review of the ruling. The motion must be accompanied by a legal memorandum which specifies the alleged errors in the ruling, with supporting legal authority, and sets out the grounds and authority for the moving party's claim that the interlocutory ruling will result in irreparable injury.

2. Any party opposing the motion for immediate review shall have ten (10) days from the date on which the motion was filed to file an opposition memorandum.

3. At the conclusion of the deadline for filing opposition memoranda, the Hearing Panel or Hearing Master shall forward to the Commissioners the motion for immediate review, any memoranda filed in support of or in opposition to the motion, a copy or transcript of the interlocutory ruling being questioned, and any written comment offered by the Hearing Panel or Hearing Master, and shall forward the motion for immediate review to the Administrator for placement on the Commission meeting agenda.

4. Pending a ruling by the Commissioners on the motion for immediate review, the Hearing Panel or Hearing Master, may, upon motion, grant a stay of the interlocutory ruling upon a finding of good cause. The mere filing of a motion for immediate review shall not stay the interlocutory ruling and shall not interrupt, delay, or in any manner interfere with the proceedings in the docketed matter.

5. The Hearing Panel or Hearing Master may treat the filing of the motion for immediate review as a motion for reconsideration of the interlocutory ruling and may withdraw or modify the interlocutory ruling in response to the motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:624 (April 2006).

§12903. Procedure for Review of Hearing Panel or Hearing Master Recommendations Regarding Final Determinations

A. Except as is provided in Subpart B, C, and D of this Rule, the preparation and review procedure for a recommendation from the Hearing Panel or Hearing Master regarding a final determination in a proceeding is as follows.

1. At the conclusion of the taking of any evidence and testimony on the matter to be decided and after consideration of the evidence and testimony and any pertinent authority, the Hearing Panel or Hearing Master shall prepare a written proposed recommendation of final determination. Unless the nature of the proceeding necessitates a different format and substance, the proposed recommendation shall contain a summary of the allegations or application, pertinent legal authority and factual background, a review of the procedural history of the matter, findings of fact, conclusions of law and the recommended determination. The proposed recommendation shall be filed into the record, with copies contemporaneously mailed to all parties of record.

2. Within fifteen (15) days of the filing of the proposed recommendation, any party may file into the record an exception to the proposed recommendation. The exception shall be in the form of a legal memorandum, and shall contain a statement of errors, pertinent legal authority, and references to the record in the proceeding, as appropriate. The exception shall not make reference to evidence of any kind which is not already a part of the record, except that a party may argue as to evidence tendered but excluded (offers of proof).

3. If no party timely files an exception to the proposed recommendation, the recommendation shall become a final recommendation and shall be immediately forwarded to the Commissioners for consideration and for vote.

4. If an exception to the proposed recommendation is timely filed, any party wishing to oppose the exception shall have fifteen (15) days from the filing of the exception in which to file an opposition memoranda into the record. The opposition memoranda shall address the statement of errors contained in the exception and shall include pertinent legal authority and references to the record in the proceeding, as appropriate. The opposition memoranda shall not include references to evidence of any kind which is not already a

part of the record, except that a party may argue as to evidence tendered but excluded (offers of proof).

5. At the conclusion of the time period for filing opposition memoranda to timely filed exceptions, no further briefing shall be allowed, except with the consent of the Hearing Panel or Hearing Master or by vote of the Commission.

6. After reviewing any timely filed exception and opposition memoranda, the Hearing Panel or Hearing Master shall prepare a final recommendation. The final recommendation shall contain the elements described in Subpart A.1 of this Rule.

7. At the time the final recommendation is filed into the record, copies of the final recommendation shall be forwarded to the Commissioners and mailed to all parties of record. Copies of the final recommendation shall also be forwarded to the Administrator for placement on the Commission meeting agenda for vote by the Commissioners.

8. Within five (5) working days of the issuance of the final recommendation, any party may request the opportunity to present oral argument at the Commission meeting. The request shall be in writing and shall be filed directly with the Administrator. The requesting party shall also mail a copy of the request to each Commissioner and to each party of record and shall file a copy of the request in the record of the proceeding. The request shall state the reasons why oral argument should be permitted and shall be considered a request on behalf of all parties to the proceeding. The Administrator shall place the request for oral argument on the Commission meeting agenda along with the final recommendation and shall notify the parties of its placement on the agenda. The request for oral argument shall be granted only upon a majority vote of the Commission at the Commission meeting, in response to a timely filed, written request. In granting a request for oral argument, the Commission may direct either that argument be presented during the course of that Commission meeting or at a subsequent Commission meeting. A party may waive its opportunity to present oral argument, either expressly or through its failure to appear and participate in the oral argument. Nothing in this subpart shall be construed as precluding any Commissioner from soliciting information, positions or recommendations or asking questions of any party appearing at a Commission meeting, regardless of whether a request for oral argument has been filed.

9. In the event the Commission votes to grant the request for oral argument, each opposing party (unless otherwise specified in the Commission vote) shall be allotted a maximum of 10 minutes. In addition, when several parties are aligned on the same side, those parties shall be allowed a total of ten (10) minutes to be allotted among themselves.

10. In the event the Commission affirms the final recommendation of the Hearing Panel or Hearing Master, the recommendation shall be incorporated into the Order issued by the Commission.

B. Upon motion to the Hearing Panel or Hearing Master and upon a showing of good cause, or upon stipulation of all parties to the proceeding, the Hearing Panel or Hearing Master may extend or shorten the deadlines for the procedures described in Subpart A of this Rule or, otherwise, may, extend, abbreviate or omit portions of those procedures.

C. To the extent the Commission has delegated to the Commission staff the handling of certain uncontested matters, the procedures within Subpart A of this Rule shall not apply.

D. Except at the discretion of the Hearing Panel or Hearing Master, the procedures contained within subpart A of this Rule shall not apply to a motion to dismiss jointly filed by all parties of record, a motion to dismiss with prejudice filed by the party who instituted the proceeding, or a motion to dismiss without prejudice filed by a party who instituted the proceeding but prior to the filing of any other party's filing of a responsive pleading. Upon the filing of such a motion to dismiss, the Hearing Panel or Hearing Master may forego all recommendation procedures and prepare an appropriate order of dismissal for issuance by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:624 (April 2006).

§12904. Stipulated Settlement Agreements

A. Applicability. This rule applies to the stipulated settlement of all issues by all parties, or any set of issues categorized for separate hearing, in any proceeding before the Commission, the Hearing Panel or the Hearing Master. In scheduling hearings, priority shall be given to any proposed stipulated settlement. A minimum of ten (10) days notice of the hearing must be sent to all parties in the proceeding, unless there is pressing public need for expedited hearing.

B. Uncontested Proposed Stipulated Settlements. When all parties to a proceeding reach an agreement as to all issues in the form of a Proposed Stipulated Settlement signed by all parties or their representatives (*Uncontested Stipulated Settlement*), the following procedures shall be followed.

1. Filing. Upon the filing of an Uncontested Stipulated Settlement, executed by all parties, any previously established procedural schedule may be continued without date by the Commission, the Hearing Panel or the Hearing Master.

2. Timing of Filing. Parties may file an Uncontested Stipulated Settlement at any time after the deadline has passed for filing interventions.

3. Hearings. In all cases, except as provided in Part B.6, or I, a hearing before the Commission shall be held on the Uncontested Stipulated Settlement by the Commission, Hearing Panel or the Hearing Master upon the parties' filing of the following supporting documentation:

a. copies of any documents, sworn supporting testimony in affidavit form, financial analysis, and exhibits which support the Uncontested Stipulated Settlement; and

b. A joint motion for the scheduling of a stipulation hearing.

4. Procedure at the Stipulation Hearing. At the hearing, the parties shall call the witnesses whose testimony was filed with the Uncontested Stipulated Settlement, and shall introduce into evidence the signed Uncontested Stipulated Settlement, as well as the supporting documentation. Affidavits, in lieu of live testimony, may be submitted.

5. Post-Hearing Report. Within ten (10) days of the hearing date, the Hearing Panel or the Hearing Master shall forward to all Commissioners, a report of the evidence and testimony supporting the Uncontested Stipulated Settlement and a copy of the Uncontested Stipulated Settlement. As soon as possible after the report is issued, the Commission shall issue and Order accepting and implementing the Uncontested Stipulated Settlement in whole or in part, or rejecting the Uncontested Stipulated Settlement in whole or in part. If the matter is initially heard by the full Commission, as soon as possible after the conclusion of the hearing, the Commission shall issue and Order accepting and implementing the Uncontested Stipulated Settlement in whole or in part, or rejecting the Uncontested Stipulated Settlement in whole or in part.

6. Consideration Without Hearing. The Commission, for reason of public need, may dispense with the requirement of a stipulation hearing and consider an Uncontested Stipulated Settlement based upon the filed documentation at a regular or special Commission Meeting.

C. Uncontested Proposed Partial Stipulated Settlements. When all parties to a proceeding reach agreement with regard to some, but not all, issues in the form of a Proposed Partial Stipulated Settlement signed by all parties or their representatives (an *Uncontested Proposed Partial Stipulated Settlement*), all provisions of this Rule that apply to Uncontested Proposed Stipulated Settlements shall apply except that the previously established procedural schedule referred to at Section B.1. above shall not be continued without date as to the remaining issues. A hearing on the merits shall be heard at the time and in accordance with a new procedural schedule to be set by the Hearing Panel or the Hearing Master.

D. Contested Proposed Stipulated Settlements. When two or more non-aligned parties, but not all parties, reach agreement with regard to all issues (the *Agreeing Parties*) in the form of a Proposed Stipulated Settlement signed by the Agreeing Parties or their representatives (a *Contested Stipulated Settlement*), the Agreeing Parties may initiate a process culminating in the Commissioners' consideration of their proposal as follows.

1. Initiation of the Process. Any two or more Agreeing Parties in a contested proceeding before the Commission may file a Contested Stipulated Settlement and request a hearing (*Request*).

2. Contents of Request. The Request shall consist of the following:

a. a joint motion by the Agreeing Parties requesting a Stipulation Hearing;

b. the Stipulated Settlement, signed by all Agreeing Parties, attesting to their agreement with its terms;

c. copies of any document, testimony in affidavit form, financial analysis, or exhibit which supports the Stipulated Settlement, together with a statement of how the proposed settlement is in the public interest;

d. citations to law or jurisprudence which support the Stipulated Settlement; and

e. if the proceeding is a rate proceeding, a proposed tariff form incorporating the Stipulated Settlement.

3. Time for Filing Request. The Request may be filed at any time after the time frame permitted in the procedural schedule for general discovery has ended, but no later than 15 days prior to the hearing on the merits except upon a showing of good cause.

4. Service of Request. The Request (in full) shall be served, concurrently with its filing with the Administrator.

5. Effect of Filed Request on Existing Procedural Schedule. Upon the timely filing of a Request, the Hearing Panel or Hearing Master may continue without date the previously established procedural schedule.

6. Evaluation of Confidential Information. Parties to the proceeding shall have an opportunity to review confidential documents involved in the settlement. If the documents are not included with the Request, they shall be made available for immediate review subject to a confidentiality agreement. Upon a showing of good cause, the Hearing Panel or Hearing Master may extend the time period for filing comments to allow for the examination of confidential documents.

7. Contents of Comments. Comments contesting a proposed Stipulated Settlement or any portion of it shall consist of:

a. a specific listing of each element of the Stipulated Settlement which is being contested, together with the commenting party's reasons for contesting those elements;

b. copies of any document, testimony in affidavit form, financial analysis, or exhibit which supports the commenting party's position; and

c. citations to law or jurisprudence that support the commenting party's position.

8. Time for Filing Comments

a. Comments must be filed with the Administrative Hearings Division within 30 days of the filing of the Request.

b. The comments (in full) shall be served, concurrently with their filing with the Administrator, on all parties of record.

9. Waiver. The failure to file timely comments shall constitute a waiver of all objections to the Stipulated Settlement.

10. Rebuttal Comments

a. The Agreeing Parties may file rebuttal comments to timely filed comments contesting the Stipulated Settlement.

b. Such rebuttal comments shall be filed with the Administrator within 7 days of the deadline for filing comments. This time period may be extended or shortened by the Hearing Panel or Hearing Master upon a showing of good cause.

c. The rebuttal comments (in full) shall be served, concurrently with its filing with the Administrator, upon all parties of record.

d. Rebuttal comments shall consist of:

i. copies of any document, testimony in affidavit form, financial analysis, or exhibit which rebuts the timely filed comments by other parties; and

ii. citations to law or jurisprudence that rebut the timely filed comments by other parties.

11. Procedure When No Contesting Comments are Filed. When no comments contesting the proposed Contested Stipulated Settlement are filed within the time frame for doing so, it shall become an Uncontested Stipulated Settlement and the hearing procedures provided for in Part B shall apply.

E. Stipulation Hearings. In scheduling hearings, the Hearing Panel or Hearing Master charged with the hearing shall give priority to any proposed stipulated settlement. A minimum of 10 days notice of the hearing must be sent to all parties in the proceeding, unless there is a pressing public need for expedited hearing.

1. Uncontested Proposed Stipulated Settlements. When no comments contesting the proposed Contested Stipulated Settlement are filed within the time frame for doing so, it shall become an Uncontested Stipulated Settlement and the same hearing procedures shall apply as provided at Section B herein.

2. Contested Proposed Stipulated Settlements. When comments contesting the proposed Contested Stipulated Settlement are filed within the time frame for doing so, the following procedures shall apply.

a. Contested Stipulated Settlement Hearings. A hearing shall be held on all Contested Stipulated Settlements within fifteen (15) days of receiving comments. At the hearing, all parties shall introduce into evidence the testimony and documentation (including the Stipulated Settlement) previously filed into the record, and nothing more. The witnesses who provided the previously filed testimony in affidavit form shall be present at the hearing, where their direct testimony shall be limited to the testimony previously provided in affidavit form. The witnesses shall be subject to cross-examination by the other parties, followed by re-direct examination by the sponsoring parties. Parties to the proceeding who failed to file timely comments contesting the Stipulated Settlement shall not be allowed to present witnesses or evidence or cross-examine witnesses.

b. Within ten (10) days of the hearing, the Hearing Panel or Hearing Master shall issue a recommendation to the Commissioners with regard to the Stipulated Settlement.

F. Discovery/Admissibility of Settlement Discussions, Admissions, or Concessions. Discovery shall not be permitted during the Stipulated Settlement process, except by permission of the Commission, Hearing Panel or the Hearing Master upon a showing of good cause. Settlement discussions, admissions or concessions are not subject to discovery and are not admissible in evidence, except by agreement of all parties.

G. Non-Approval Of Proposed Stipulated Settlement. In the event the Commission does not approve a Stipulated Settlement, the Commission, Hearing Panel or the Hearing Master shall schedule a status conference to establish a new procedural schedule which includes a hearing on the merits.

H. Burden of Proof with Regard to Proposed Stipulated Settlements. The parties proposing a stipulated settlement shall have the burden of proving that the stipulated settlement is reasonable in light of the record, consistent with the law, and not contrary to the public interest.

I. Exception

1. Notwithstanding any of the above provisions in this Rule, the Commission may, on its own motion, vote to waive any and/or all of the requirements of this Rule and ratify and/or approve a stipulated settlement if it finds it to be in the public interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:625 (April 2006).

Chapter 130. Abandonment

§13001. Abandonment after One Year

A. Unless otherwise ordered by the Commission, a docketed proceeding instituted before the Commission is deemed abandoned when the parties fail to take any step in its prosecution or defense for a period of one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:627 (April 2006).

Chapter 131. Rulemaking

§13101. Proposal and Promulgation of Rules

A. The procedure for the proposed adoption, amendment, or repeal of any rule or regulation shall be in accordance with the rules in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:627 (April 2006).

§13102. Definitions

A. *Rule*—each statement, guide, or requirement of the Commission for conduct or action, exclusive of those regulating only the internal management and organization of the Commission and its staff, which has the effect of implementing or interpreting substantive law or policy.

B. *Rulemaking*—the process employed by the Commission for the formulation of a rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:627 (April 2006).

§13103. Public Information; Adoption of Rules; Availability of Rules and Orders

A. The Commission shall make available for public inspection all rules, preambles, responses to comments, and submissions and all other written statements of policy or interpretations formulated, adopted, or used by the Commission in the discharge of its functions. All Commission rules shall be posted on the Commission website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:627 (April 2006).

§13104. Procedure for Adoption of Rules

A. Prior to the adoption, amendment, or repeal of any rule, the Commission shall provide notice of its intended action and a copy of the proposed rules at least 60 days prior to taking action on the rule. The notice shall include:

1. a statement of either the terms or substance of the intended action or a description of the subjects and issues involved;

2. the name of the person within the Commission who has the responsibility for responding to inquiries about the intended action;

3. the time when, the place where, and the manner in which interested persons may present their views thereon;

4. a statement that the intended action complies with the statutory law administered by the Commission, including a citation of the enabling legislation; and

5. a statement indicating whether the Commission has prepared a preamble which explains the basis and rationale for the intended action, summarizes the information and data supporting the intended action, and provides information concerning how the preamble may be obtained.

B. The notice shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least 60 days prior to the date the Commission will take action on the rule. Upon publication of the notice, copies of the full text of the proposed rule shall be available from the Commission upon written request.

C. Notice of the intent of the Commission to adopt, amend, or repeal any rule and the proposed rule shall also be posted at the Commission office and on the Commission website at the time the proposed rule change is submitted to the Louisiana Register.

D. For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

E. All interested persons shall be afforded a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested within twenty days after publication of the rule as provided in this Subsection, by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members.

F. The Commission shall issue an order which includes the final rules, as well as a brief response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written or oral comments and submissions. In addition to the response to comments, the Commission may prepare a preamble explaining the basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions.

G. The final rules shall be submitted to the Louisiana Register for publication and posted at the Commission offices and on the Commission website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:627 (April 2006).

§13105. Initiation of Rulemaking by Petition

A. An interested person may petition the Commission requesting the adoption, amendment, or repeal of a rule.

B. Within sixty days after submission of a petition, the Commission shall either deny the petition in writing, stating reasons for the denial, or shall initiate rule making proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:628 (April 2006).

§13106. Filing; Taking Effect of Future Rules

A. The Commission shall file a certified copy of its rules with the Department of the State Register. No rule shall be effective, nor may it be enforced, unless it has been properly filed with the Department of the State Register. The inadvertent failure to mail notice and statements to persons

making request for such mail notice shall not invalidate any rule adopted hereunder.

B. Each rule hereafter adopted shall be effective upon its publication in the Louisiana Register. Said publication shall be subsequent to the act of adoption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:628 (April 2006).

Chapter 132. Orders

§13201. Form, Content and Service of Orders

A. All orders of the Commission shall be in writing and shall be signed by at least six (6) Commissioners or by the Administrator on behalf of the Commission when so authorized. The written order of the Commission shall be issued as soon as possible after the Commission's decision. Abstinences shall be regarded as total nonparticipation by the abstaining Commissioner or Commissioners, except where an abstention deadlocks the participatory vote, in which case an abstention shall be taken as a denial of the relief sought. All orders shall incorporate findings of fact as the record justifies and conclusions of law. A copy of each order shall be served forthwith upon all parties to the proceeding by the Administrator. All orders shall go into effect ten (10) days after mailing thereof, unless otherwise provided, or unless a motion for rehearing is filed timely.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:628 (April 2006).

§13202. Preparation of the Order

A. Once a final decision is rendered by the Commission, the Commission shall instruct the prevailing party to prepare a draft order. The prevailing party shall circulate the draft order to the other parties for comment. If no objections are received within ten days, the Commission shall issue the final order. If any objections are received with respect to the draft order, the Commission shall ask for comments on the disputed language and decide the issue as it deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:628 (April 2006).

§13203. Reserved.

§13204. Rehearing

A. When the Commission concludes that substantial errors of procedure or the exclusion of evidence have so affected the record as to render it impracticable to determine the case justly and fairly upon the record provided by the Commission, Hearing Panel or Hearing Master, it may order a rehearing on its own motion. The Commission may also order a rehearing on motion of any party provided said motion is received within ten (10) days of the mailing of the order or ruling complained of. The ruling or order complained of shall be suspended with the filing of an appropriate motion to rehear until the motion to rehear is denied; provided that, any order or ruling of the Commission which specifically sets a date for the effectiveness of such shall not be suspended by the filing of a motion to rehear. The granting of a motion or setting of a matter for rehearing shall suspend the operation of the rule or order in question unless otherwise provided by the Commission. Where no motion to rehear is timely filed, orders shall become effective ten (10) days after issuance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:628 (April 2006).

§13205. Voting

A. The Chairman shall decide the order in which the votes of Commission members are cast and, at his discretion, may vote last.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:967 and Pilotage Fee Commission Rule 60.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Pilotage Fee Commission, LR 32:629 (April 2006).

Subpart 6. Board of Louisiana River Pilot Review and Oversight

Chapter 150. General Provisions

§15001. Authority

A. These rules and regulations are promulgated in accordance with the provisions of R.S. 34:1135.A in order to provide for the implementation, enforcement, and administration of R.S. 34:1131 et seq., which provide for the creation, powers, duties, and responsibilities of the Board of Louisiana River Pilot Review and Oversight. These regulations are further promulgated in accordance with the Administrative Procedure Act (APA), R.S. 49:950 et seq., to the extent that any procedure in the APA does not conflict with any provision of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 34:1135.A.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:984 (May 2010).

§15003. Purpose

A. The purposes of these rules and regulations are as follows:

1. to establish rules and regulations for the procedures to be used by the board in performing its duty to request, receive, and review reports prepared by the Board of Commissioners or Examiners and its rendering of decisions:

a. not to act on an accident report;

b. approving a consent discipline; or

c. rendered in a formal disciplinary adjudication.

2. to establish rules and regulations for the procedures to be used by the board in performing its duty to receive appeals from a formal disciplinary proceeding before the Board of Commissioners or Examiners;

3. to establish rules and regulations for the procedures to be used by the board in performing its duty to receive sworn complaints against any pilot from any source for actions taken by a pilot while in the performance of his duties;

4. to establish rules and regulations for the procedures to be used by the board in performing its duty to submit an annual report to the general counsel of the Department of Transportation and Development on accident investigations;

5. to establish rules and regulations for the procedures to be used by the board in requiring that a permanent accident or incident record on each pilot be maintained as well as an accident investigation file as long as the pilot involved has a state commission;

6. to establish rules and regulations for the procedures to be used by the board in performing its duty to submit accident reports in which state property is involved or damaged to the general counsel of the Department of Transportation and Development.

AUTHORITY NOTE: Promulgated in accordance with La. R.S. 34:1135.C - K.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:984 (May 2010).

§15005. Definitions

A. The following terms as used in these rules and regulations shall have the following meanings:

Accident—any occurrence involving a vessel that results in any allision, collision, grounding, loss of life, or personal injury that requires professional medical treatment (treatment beyond first aid).

Adjudication—the board's or the Board of Commissioners' or Examiners' process for the formulation of a decision or order.

Administrative Complaint—any written document filed by an investigating officer with the board or the Board of Commissioners or Examiners in the procedure prescribed in §15217 of this rule.

Administrative Procedure Act or *APA*—the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

Alcohol—any intoxicating beverage, fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol, and any distilled spirit as defined in 27 U.S.C. 211.

Board of Commissioners or Examiners—the Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:941 et seq., the Board of River Port Pilot Commissioners for the Port of New Orleans, established in R.S. 34:991 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, established in R.S. 34:1041 et seq., and the Board of River Port Pilot Commissioners and Examiners for the Calcasieu River Waterway, established in R.S. 34:1072 et seq.

Board or Board of Review and Oversight—the Louisiana River Pilot Review and Oversight, established by R.S. 34:1131 et seq.

Complaint—any sworn typewritten submission filed by any source with the board against any state commissioned pilot for actions taken by the pilot while in the performance of his duties, including acts of misconduct, carelessness, incompetence, intoxication, negligence, the refusal to offer timely pilotage services without just cause, abuse of legally prescribed medication and illegal use of controlled dangerous substances.

Controlled Dangerous Substance—any drug as defined in R.S. 40:961.7 and R.S. 40:964, and any controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

Decision or *Order*—the final disposition of any matter decided by the board involving a state commissioned pilot while the pilot is acting under his state commission. A decision or order shall also mean the final disposition of any matter decided by the Board of Commissioners or Examiners involving a state commissioned pilot.

Drug—all controlled dangerous substances as defined in R.S. 40:961.7 and R.S. 40:964, and any substance, by whatever official name, common or usual name, chemical name, or brand name designated in Schedules I-V, 21 CFR 1308.11-15.

Grounding—a beaching or running aground in which the vessel is damaged or needs assistance to be refloated.

Incident—

a. any accident as defined in this Subsection;

b. any sworn complaint involving a state commissioned pilot while acting under his commission; or

c. any other event involving a Louisiana state commissioned pilot while acting under his commission that, in the discretion of any member of the Board of Commissioners or Examiners, justifies further investigation.

Incident Report—the form provided by the board to be completed and submitted by the Board of Commissioners or Examiners involving any incident.

Notice or *Issue Notice or Service*—in connection with these regulations and the requirements for notice in the APA, R.S. 49:955.B, means that all references to the providing and delivering of service of written documents or pleadings shall be by personal service or certified mail, return receipt requested, or by means of a commercial overnight carrier.

Party—in connection with an appeal of a formal disciplinary adjudication before the Board of Commissioners or Examiners, means the pilot who is the subject of the

investigation, the Board of Commissioners or Examiners, and the investigator appointed by the Board of Commissioners or Examiners.

Pilot—as defined in R.S. 1131(3), means those pilots as designated in R.S. 34:941, 992, 1041, and 1071.

Prescribed Medication—controlled dangerous substance distributed by the authorization of a licensed physician as defined in R.S. 40:961.31.

Report—any written submission, in the manner prescribed by §15207 of this Subpart prepared by the Board of Commissioners or Examiners as follows:

a. relating to an accident involving any state commissioned pilot while the pilot is acting under his state commission;

b. relating to a consent discipline agreed to by and between a state commissioned pilot and the Board of Commissioners or Examiners; and

c. relating to a formal disciplinary adjudication rendered by the Board of Commissioners or Examiners.

Rule—each statement, guide, or requirement of the board for conduct or action relating to its duties, or which prescribes the procedure or practice requirements of the board.

Rulemaking—the process employed by the board for the formulation of a rule.

Sworn—in connection with a complaint, means the allegations made by the complainant that are given in writing and under oath before a notary public in which the complainant swears to the truthfulness of the allegations, subject to the penalties for perjury.

AUTHORITY NOTE: Promulgated in accordance with 21 CFR 1308.11-15, 27 U.S.C. 211(a)(5) and 27 CFR 1.10, R.S. 34:1129.2, R.S. 1131(3), R.S. 34:1133.G, R.S. 34:1135.F, R.S. 34:1135.C – E, and R.S. 49:951.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:984 (May 2010).

Chapter 152. Board of Louisiana River Pilot Review and Oversight

Subchapter A. General Provisions

§15201. Domicile and Meetings

A. The domicile of the board shall be the Parish of Orleans which address is presently 201 St. Charles Avenue, 31st Floor, New Orleans, LA 70170 or such other address as the board members establish from time to time.

B. The board shall meet at least twice a year, at times and places of its choosing. Other meetings may be held at the discretion of the board. Meetings may be called by the chairman, or at the written request of any three members of the board.

C. The board shall be composed of 11 members. Six members of the board shall constitute a quorum, but any decision of the board shall be obtained by a majority vote of the members of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1133.A, R.S. 34:1134.A.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:985 (May 2010).

§15203. Officers of the Board

A. The officers of the board shall be a chairman, a vice chairman, and a secretary/treasurer, who shall be elected at the first meeting of the board, and annually thereafter.

B. Elections of officers shall be held annually. There shall be no limit to the number of times a member of the board may be elected to any office.

C. The duties of the officers shall be:

1. Chairman—shall preside at all board meetings and shall be the Chief Executive Officer, shall call all board meetings, shall conduct all meetings in accordance with Robert's Rules of Order, and shall be the designee of the board with the authority to request reports under the provisions of R.S. 34:1135.C.

2. Vice Chairman—shall act in the absence of the chairman, and shall carry out such other assignments as may be delegated or assigned to him by the chairman.

3. Secretary/Treasurer—shall maintain the minutes of meetings and financial records, if any, shall prepare and submit the annual report under R.S. 34:1135.I, shall ensure that the Board of Commissioners or Examiners maintain accident or incident records under R.S. 34:1135.J as prescribed in §15221.B of this Chapter, shall prepare and submit accident reports under R.S. 34:1135.K, and shall provide a copy of the board's rules and regulations to all state commissioned pilots under R.S. 34:1135.L.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1134.C, and R.S. 34:1132.C.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:985 (May 2010).

Subchapter B. Powers and Duties

§15205. Preamble

A. No provision contained in this Subpart shall limit or supersede the duties and responsibilities of the Board of Commissioners or Examiners. Act 902, 2004 Leg., Regular Session (codified at R.S. 34:1131 et seq.) created the Board of Louisiana River Pilot Review and Oversight and the purpose was to provide review and oversight of decisions by the Board of Commissioners or Examiners regarding the actions taken by any pilot while the pilot is acting under his state commission. The Board, acting in its role, performs its duty under R.S. 34:1135.C to request, receive, and review reports prepared by the Board of Commissioners or Examiners similar to court of appeals in the judicial system but, unlike a court of appeals, also provides a forum for

appeals from any party to a formal disciplinary proceeding before the Board of Commissioners or Examiners, and also provides a forum for sworn complaints to be filed, pursuant to its duty under R.S. 34:1135.G to receive sworn complaints against any pilot.

AUTHORITY NOTE: Promulgated in concurrence with R.S. 34:1135.C, F, G, M.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:986 (May 2010).

§15207. Reports to the Board

A. The Board of Commissioners or Examiners shall submit reports to the board related to accidents involving any state commissioned pilot subject to this Rule while the pilot is acting under his state commission, reports as to consent disciplines agreed to by and between a state commissioned pilot and the Board of Commissioners or Examiners, and reports as to formal disciplinary adjudications rendered by the Board of Commissioners or Examiners.

B. The chairman of the Board of Commissioners or Examiners shall submit the executed original report to the board with a copy to each of the members of the board and one certified copy to the affected state commissioned pilot.

C. The form and format of the report shall be set out by the board from time to time to allow for changes in technology.

D. On the outside of the front cover of each written report, there shall be inscribed with proper separation of lines and spaces, and in the following order:

1. the title of the Board of Commissioners or Examiners that prepared and submitted the report;

2. the date of the accident; and

3. the name of the pilot.

E. The contents of the report shall at least contain:

1. the date of the meeting of the Board of Commissioners or Examiners;

2. the result of the vote of the Board of Commissioners or Examiners;

3. the signature of the chairman certifying the results of the vote;

4. an excerpt of the minutes of the meeting of the Board of Commissioners or Examiners at which a decision was reached, whether that decision be not to act, a consent discipline, or a formal disciplinary adjudication;

5. the relevant supporting documents:

a. if no action, then a copy of the investigator's findings of fact, and/or report, and/or recommendations that were submitted to the Board of Commissioners or Examiners and upon which the decision to take no action was based; or

b. if a consent discipline or similar disposition, then the investigator's report submitted to the Board of Commissioners or Examiners including any findings of the fact and recommendation and the signed consent order; or

c. if an adjudication, then the investigator's report submitted to the Board of Commissioners or Examiners including any findings of the fact and recommendation and a copy of the Board of Commissioners' or Examiners' decision or adjudication order, which may contain findings of fact and conclusions and recommendations.

F. After receipt of the report, any individual board member may request in writing through the chairman that the report be supplemented by the Board of Commissioners or Examiners other relevant materials in the order in which such documents were filed, including:

1. the preliminary accident or incident report;

2. the investigator's findings of fact, and/or report, and/or recommendations;

3. the investigator's formal administrative complaint; or

4. the transcript of the hearing.

G.1. The chairman shall forward the individual board member's written request for supplemental documents to the Board of Commissioners or Examiners and forward a copy to all other members of the board.

2. In the event the Board of Commissioners or Examiners is unable or unwilling to provide the requested supplemental documents then the board, at its next meeting, may review the individual board member's written request and the Board of Commissioners or Examiners position and may consider by vote of the board ordering the Board of Commissioners or Examiners to produce the requested documents under §15207.F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1135.C-E, and Uniform Rule 2-1.7.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:986 (May 2010).

§15209. Requests from the Board

A. The board may request, at any time, completed reports from the Board of Commissioners or Examiners related to accidents involving any state commissioned pilot subject to this Rule while the pilot is acting under his state commission. Reports are considered completed upon the Board of Commissioners or Examiners reaching a decision as set out in §15207.E.4 of this Chapter. As to the completed reports, the Board of Commissioners or Examiners shall submit its report to the Board within 14 days after receiving a request from the board, if not previously submitted. Additionally, the board may request an updated status of any matter reported in an incident report previously submitted to the board by the Board of Commissioners or Examiners.

B. The board shall issue notice along with an executed original of each request to the Board of Commissioners or Examiners at its official address.

AUTHORITY NOTE: Promulgated in accordance with 33 CFR §20.302, and R.S. 34:1135.C.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:986 (May 2010).

§15211. Board's Action on Reports of Accidents, Consent Disciplines, or Formal Disciplinary Adjudications

A.1. After receiving a report on any accident, consent discipline, or formal disciplinary adjudication from the Board of Commissioners or Examiners, the board shall act on the report at its next meeting, provided it is submitted 30 days prior to the meeting, and shall either:

a. take no further action, thereby consenting to the action of the submitting Board of Commissioners or Examiners;

b. request additional information under §15209 of this Chapter, in which event the Board of Commissioners or Examiners shall submit the additional information within 30 days of receiving notice from the board, and the report shall be reconsidered along with the additional information at the board's next meeting provided it is resubmitted 30 days prior to the meeting; or

c. remand the matter to the submitting Board of Commissioners or Examiners for further investigation or proceedings, the results of which are to be submitted to the board.

2. The board at its discretion may waive the 30-day submission requirement and elect to act on an untimely submitted report. If the board does not waive the 30-day submission requirement, then the untimely report will be considered by the board at its next meeting.

B. Within 60 days of its meeting, the board shall notify the Board of Commissioners or Examiners in writing of its action under Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 1135.C-E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:987 (May 2010).

§15213. Appeals from Formal Disciplinary Adjudications

A. Any aggrieved party to a formal disciplinary proceeding before the Board of Commissioners or Examiners has the right, at the party's discretion, to obtain a review of the final decision of the Board of Commissioners or Examiners by filing a written notice of appeal with the board. The party shall file the notice of appeal with the board within 45 days after the Board of Commissioners or Examiners issued notice of its final decision, and shall serve a copy of the notice of appeal on the parties to the formal disciplinary proceeding.

B. In the event of parallel appeals to the board and the state district court, the board, if it completes its review before the state district court renders a decision, may intervene in the state district court's Appeal to advise the court of its findings.

AUTHORITY NOTE: Promulgated under La. R.S. 34:1135.F, and R.S. 49:964(1); based on 33 CFR §20.1001.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:987 (May 2010).

§15215. Procedure for Appeal

A. An appeal is taken by the timely filing of a notice of appeal with the board and the Board of Commissioners or Examiners.

B. Upon the timely filing of a notice of appeal, the Board shall issue notice that the appeal has been timely filed to the counsel of all other parties, to the respective Board of Commissioners or Examiners, and to any party not represented by counsel.

C. The return day of the appeal shall be 45 days from the date notice is given that the testimony is transcribed, which completes the record of proceedings.

D. The record of proceedings shall constitute the official record on appeal and consists of the transcript of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, the Board of Commissioners or Examiners' decision, all orders, and all rulings.

E. The Board of Commissioners or Examiners shall prepare the record of proceedings and lodge it with the Board on or before the return day. Failure of the chairman of the Board of Commissioners or Examiners to prepare and lodge the record timely on appeal shall not prejudice the appeal.

F. The record of proceedings prepared by the Board of Commissioners or Examiners to be lodged with the board shall be certified and dated by the chairman of the Board of Commissioners or Examiners upon completion.

G. Once the record of proceedings has been lodged, the board shall issue notice to the counsel of all other parties, to the respective Board of Commissioners or Examiners, and to any party not represented by counsel.

H. The appeal commences when the Board issues an order granting appeal and issues a notice of appeal to the counsel of all other parties, to the respective Board of Commissioners or Examiners, and to other parties not represented by counsel.

I. The board and the parties shall provide notice as follows:

1. The board shall serve upon each party to the proceeding a copy of each document issued by the board in the proceeding.

2. Unless the board orders otherwise, each person filing a document with the secretary/treasurer shall serve upon each party a copy of it.

3. If a party filing a document must serve a copy of it upon each party, each copy must bear a certificate of service, signed by or on behalf of the filing party, stating that he has so served it.

J. The secretary/treasurer of the board shall post the calendar of assignments for hearing at the official address of the board and issue notice to all counsel of record, and to any party not represented by counsel, not less than 30 days prior to the date fixed for the hearing of an appeal on the calendar, provided, however, that the 30 day notice herein shall not be applicable when there will be no oral argument.

K. Public Notice. Upon the granting of an appeal under R.S. 34:1135.F, the board shall provide public notice of the hearing. The notice shall be posted in the domicile of the board, at the official address of the board and provided to anyone who may request notice.

L. Preparation of Briefs. The procedures for filing briefs, requesting and conducting oral arguments, and serving notice shall be taken in the same manner as in any civil appeal under the Louisiana Uniform Rules of Court for the Courts of Appeal, as they exist now and as they may be amended.

M. Hearings. The board may order oral argument based on the record of proceedings submitted. The order of argument, length of time, reading from briefs, and use of textual materials and exhibits shall be in the same manner as in any civil appeal under the Louisiana Uniform Rules of Court for the Courts of Appeal, as they exist now and as they may be amended.

N. Actions Available to the Board. In an appeal, following notice and a hearing, the board may acquit the pilot or may impose its own sanctions against a pilot, including but not limited to reprimand of the pilot, ordering pilot to participate in remedial training, impose a fine not to exceed $10,000, order the pilot to pay the costs of the hearings inclusive of attorney fees, or recommend to the governor that the pilot's commission be suspended or revoked.

O. Decision or Judgment. The board shall render a decision or judgment as to an appeal at the hearing or at its next meeting, which shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with the rules of the board, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

P. Notice of Judgment. Notice of the judgment of the board shall be issued by the board to all counsel of record, to the respective board of Commissioners or Examiners, and to all parties not represented by counsel. The board shall file a certificate in the record showing the date on which and the names of all parties or persons to whom the notice of judgment was delivered or mailed.

AUTHORITY NOTE: Promulgated in accordance with 33 CFR §20.304, 33 CFR §20.401, 33 CFR §20.402, 33 CFR §20.903, C. Civ. P. Art. 2121, C. Civ. P. Art. 2125, C. Civ. P. Art. 2127, C. Civ. P. Art. 2127.1, R.S. 34:1135.F, R.S. 49:964(1) based on 33 CFR §20.1001, R.S. 49:958, La. Uniform Rules, Courts of Appeal 2-11.9.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:987 (May 2010).

§15217. Sworn Complaints to the Board

A. Any source may file a sworn complaint within one year of the alleged acts complained of.

B. The board shall receive any sworn complaint from any source against a state commissioned pilot while in the performance of his duties, including acts of misconduct, carelessness, incompetence, intoxication, negligence, or the refusal to offer timely pilotage services without just cause, and any sworn complaint against a pilot for abuse of legally prescribed medication and/or illegal use of controlled dangerous substances.

C. Any sworn complaint submitted by any source to the board shall be typewritten and submitted on plain paper and shall include the date and time of the incident, a description of what happened, the type of incident, casualties, location, conditions, name of vessel piloted, if known, any other vessels, structures, or objects involved, the name of the pilot, if known, and any allegations against the pilot, and shall be given in writing and under oath before a notary public in which the complainant swears to the truthfulness of the allegations, subject to the penalties for perjury.

D. If a sworn complaint is not submitted in the prescribed manner, the board shall return it, with an explanation of error, and without prejudice to the sender to properly refile.

AUTHORITY NOTE: Promulgated under La. R.S. 34:1135.G.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:988 (May 2010).

§15219. Board's Action on Sworn Complaints

A. After receiving a sworn complaint as defined in §15005 of this Subpart from any source, the board shall act on the complaint at its next meeting provided it is submitted at least 30 days prior to the meeting. Within 60 days of its meeting, the board shall notify the complainant and the respective Board of Commissioners or Examiners in writing of its action to either:

1. refer the matter to the appropriate Board of Commissioners or Examiners for investigation, the results of which are to be submitted to the board in the form of a report; or

2. conduct investigations and, if necessary, conduct hearings pursuant to the Administrative Procedure Act and the rules adopted by the board.

B. Conducting Investigations. After the board makes a decision under §15219.A.2 of this Chapter, the board may begin its investigation under the following procedures.

1. The board may appoint an investigating officer to investigate the complaint and report to the board.

2. Following the board's decision to conduct an investigation under §15219.A.2 of this Chapter, above, and prior to the acceptance of an administrative complaint, which begins the commencement of administrative proceedings and noted in §15219.I of this Chapter, the Board shall follow the provisions of the Louisiana Open Meetings Law, R.S. 42:6.1(A)(4), which provides that investigative proceedings regarding allegations of misconduct may be held in an executive session pursuant to R.S. 42:6.

3. If the board, or its designated investigating officer, is of the opinion that the complaint, if true, is sufficient to justify a further investigation, it shall appoint an investigating officer, or authorize its designated investigating officer to conduct a full investigation of the complaint.

4. Once authorized under §15219.B.2 of this Chapter, the investigating officer, who may be an active or retired member of Board of Examiners of Bar Pilots for the Port of New Orleans, the Board of River Port Pilot Commissioners for the Port of New Orleans, the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, or the Board of River Port Pilot Commissioners and Examiners for the Calcasieu River Waterway. He shall be assisted by an attorney, named as independent prosecutor by the board. In the event that the investigating officer, as contemplated by either §15219.B of this Chapter, is an active member of the board, he shall be recused from any participation in the decision of the case.

5. If the investigating officer is of the opinion that the conduct in question is not sufficient to justify further proceedings, he shall make a reasoned report to the board, which may accept or reject his recommendation.

C. If the investigating officer is of the opinion that the conduct complained of is sufficient to justify further proceedings and the board has accepted his recommendations, or if the board has rejected his recommendation to dismiss the complaint, he shall give notice to the state commissioned pilot, the Board of Commissioners or Examiners, and the complainant, by regular mail, of the facts or conduct on which the complaint is based, and offer the pilot an opportunity to show compliance with the laws or regulations allegedly violated. If, in the opinion of the investigating officer, the pilot is able to demonstrate such compliance, then the investigating officer shall make a report to the board, recommending to the board that the complaint be dismissed. The board may accept or reject the recommendation of the investigating officer.

D. If the state commissioned pilot is unable to demonstrate such compliance, or if the board rejects the recommendation of the investigating officer to dismiss the complaint, the investigating officer shall, with the assistance of the board-appointed prosecutor, initiate proceedings by filing a written administrative complaint with the board, which shall be signed by the investigating officer.

E. The written administrative complaint shall name the accused state commissioned pilot as respondent in the proceedings. It shall also set forth, in separately numbered paragraphs, the following:

1. a concise statement of material facts and matters alleged and to be proven by the investigating officer, including the facts giving rise to the board's jurisdiction over the respondent;

2. the facts constituting legal cause under law for administrative action against the respondent; and

3. the statutory or regulatory provisions alleged to have been violated by respondent.

F. The administrative complaint shall conclude with a request for the administrative sanction sought by the investigating officer, and shall state the name, address, and telephone number of administrative complaint counsel (the prosecutor) engaged by the board to present the case at the evidentiary hearing before the board.

G. The board may either accept or reject the administrative complaint.

H. If the board rejects the administrative complaint, the case may be either dismissed or referred back to the investigating officer for further investigation.

I. Administrative Proceedings Commence: If the board accepts the administrative complaint, the board shall docket the administrative complaint and schedule the administrative complaint for hearing before the board not less than 45 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the investigating officer or respondent pursuant to a showing of proper grounds. In the event the respondent's commission as a pilot has been suspended by the board pending hearing, the evidentiary hearing on the administrative complaint shall be noticed and scheduled not more than 45 days after the filing of the administrative complaint.

J. A written notice of the administrative complaint and the time, date, and place of the scheduled hearing thereon shall be served upon the respondent and the Board of Commissioners or Examiners. The notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held, and shall be accompanied by a certified copy of the administrative complaint.

K. The case shall be prosecuted by the independent prosecutor, also referred to as administrative complaint counsel, who shall handle the case to its conclusion. He shall be entirely independent of the authority of the Board in going forward with the matter, and may conduct such further investigation, and prepare and try the case in such manner as he may deem appropriate.

L. Within 15 days of service of the administrative complaint, or such longer time as the board, on motion of the respondent, may permit, the respondent may answer the administrative complaint, admitting or denying each of the separate allegations of fact and law set forth therein. Any matters admitted by respondent shall be deemed proven and established for purposes of adjudication. In the event that the respondent does not file a response to the administrative complaint, all matters asserted therein shall be deemed denied.

M. Any respondent may be represented in an adjudication proceeding before the board by an attorney at law duly admitted to practice in the State of Louisiana. Upon receipt of service of an administrative complaint pursuant to these rules, or thereafter, a respondent who is represented by legal counsel with respect to the proceeding shall, personally or through such counsel, give written notice to the Board of the name, address, and telephone number of such counsel. Following receipt of proper notice of such representation, all further notices, administrative complaints, subpoenas or other process related to the proceeding shall be served on respondent through his or her designated counsel of record.

N. All pleadings, motions or other papers permitted or required to be filed with the board in connection with a pending adjudication proceeding shall be filed with the office of the board and shall by the same method of delivery be concurrently served upon administrative complaint counsel designated by the administrative complaint, if filed by or on behalf of the respondent, or upon respondent, through counsel of record, if any, if filed by administrative complaint counsel.

1. All such pleadings, motions or other papers shall be submitted on plain white letter-size (8 1/2" x 11") bond, with margins of at least one inch on all sides, and double spaced except as to quotations and other matters customarily single spaced, shall bear the caption and docket number of the case as it appears on the administrative complaint, and shall include the certificate of the attorney or person making the filing that service of a copy of the same has been effected in the manner prescribed by Subsection N of this Section.

2. The board may refuse to accept for filing any pleading, motion or other paper not conforming to the requirements of this Section and shall return such filing to the sender with an explanation of error and without prejudice.

O. Motions. Motions for continuance of hearing, for dismissal of the proceeding, and all other pre-hearing motions shall be filed not later than 30 days following service of the administrative complaint on the respondent or 15 days prior to the hearing, whichever is earlier. Each pre-hearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefore. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion. Within 10 days of the filing of any such motion and memorandum or such shorter time as the board may order, the investigating officer, through administrative complaint counsel, may file a memorandum in opposition to or otherwise setting forth the investigating officer's position with respect to the motion.

1. A motion for continuance of hearing shall be filed within the delay prescribed by this Subpart, provided that the board may accept the filing of a motion for continuance at any time prior to hearing upon a showing of good cause not discoverable within the time otherwise provided for the filing of pre-hearing motions.

2. A scheduled hearing may be continued by the board only upon a showing by respondent or administrative complaint counsel that there are substantial legitimate grounds that the hearing should be continued, balancing the right of the respondent to a reasonable opportunity to prepare and present a defense to the complaint and the board's responsibility to protect the public health, welfare and safety. Except in extraordinary circumstances evidenced by verified motion or accompanying affidavit, the board will not ordinarily grant a motion to continue a hearing that has been previously continued upon motion of the same party.

3. If an initial motion for continuance is not opposed, it may be granted by the presiding officer.

4. Any pre-hearing motion, other than an unopposed initial motion for continuance of hearing which may be granted by the chairman of the board, shall be referred for decision to the board member designated by the board as the presiding officer of the board with respect to the proceeding for ruling. The presiding officer in each matter before the board may, in his discretion, refer any pre-hearing motion to the board for disposition, and any party aggrieved by the decision of a presiding officer on a pre-hearing motion may request that the motion be reconsidered by the entire board.

5. Pre-hearing motions shall ordinarily be ruled upon by the presiding officer or the board, as the case may be, on the papers filed without hearing. On the written request of respondent or of administrative complaint counsel, however, and on demonstration that there are good grounds therefore, the presiding officer may grant opportunity for hearing by oral argument on any pre-hearing motion.

P. Upon request of the respondent or administrative complaint counsel and compliance with the requirements of this Section, the chairman of the board or the presiding officer shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

Q. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof, shall receive such additional compensation from the party

who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

R. In any case of adjudication noticed and docketed for hearing, counsel for respondent and administrative complaint counsel may agree, or the presiding officer may require, that a pre-hearing conference be held among such counsel, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

S. Following such pre-hearing conference the parties shall, and without such conference the parties may, agree in writing on a pre-hearing stipulation which should include:

1. a brief statement by administrative complaint counsel as to what such counsel expects the evidence to be presented against respondent to show;

2. a brief statement by respondent as to what the evidence and arguments in defense are expected to show;

3. a list of the witnesses to be called by administrative complaint counsel and by respondent, together with a brief general statement of the nature of the testimony each such witness is expected to give;

4. any stipulations which the parties may be able to agree upon concerning undisputed claims, facts, testimony, documents, or issues; and

5. an estimate of the time required for the hearing.

T. Adjudication hearings, being the hearings conducted on the merits of the administrative complaint, shall be conducted in open session in accordance with the Louisiana Open Meetings Law, R.S. 42:6.

U. Adjudication hearings, including the presentation of facts and arguments, examination and cross-examination of witnesses, offering and introduction of evidence and exhibits, testimony, rulings on evidentiary and procedural questions, compiling of the record, findings of fact, weighing of evidence and notice of facts, administration of oaths, and regulation of the hearing shall be conducted in accordance with the provisions of the APA, R.S. 49:955 to 956, except that Notice as defined in §15005 of this Subpart shall govern all requirements concerning notice, issue of notice, and service. Additionally, the use of the term "agency" or "agencies" in the APA shall mean board, and R.S. 49:956(d) is modified in part by the provisions of R.S. 34:1135.N.

V. Except as otherwise governed by the provision of these rules, adjudication hearings before the board shall be governed by the Louisiana Code of Evidence, insofar as the same may be applied, and the provisions of APA, R.S.49:960 shall be applicable to the board and the parties and use of the term "agency" or "members" or "employees" shall mean board, board members, and staff.

W. In any adjudication hearing, the board's deliberations may be held in executive session pursuant to R.S. 42:6.1.A(1).

X. In any adjudication hearing, the board's decision shall be in an open meeting.

Y. Following notice and a hearing, the board may either:

1. acquit the pilot; or

2. impose sanctions against the pilot, including but not limited to reprimand of the pilot, order the pilot to participate in remedial training, impose a probationary period, impose a fine not to exceed $10,000 order the pilot to pay the costs of the hearings inclusive of attorney fees, or recommend to the governor that the pilot's commission be suspended or revoked.

3. The board shall have the authority to suspend a pilot's commission in the event of an emergency pursuant to the emergency procedures set out in the APA, R.S. 49:961, which provides that no revocation, suspension, annulment, or withdrawal of any state commission is lawful unless, prior to the institution of agency proceedings, the board gives notice by mail to the state commissioned pilot of facts or conduct which warrant the intended action, and the state commissioned pilot is given an opportunity to show compliance with all lawful requirements for the retention of the state commission. If the board finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a state commission may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1135.G, R.S. 34:1135.N, R.S. 42:6.1, R.S. 42:6, R.S. 42:6.1(A)(4), R.S. 49:961.C, R.S. 49:955-56, Pilot Rules, Title 46 §304.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:988 (May 2010).

§15221. Annual Reports

A. In compliance with R.S. 34:1135.I, the board requires that the Board of Commissioners or Examiners maintain a permanent accident or incident record on each pilot it regulates as well as an accident investigation file as long as the pilot involved has a state pilot commission. The board shall have access to these records.

B. The board shall submit an annual report to the general counsel of the Department of Transportation and Development on any accident investigation.

1. The report shall identify the accident and location, the pilot involved, a description of the damage sustained, and the action taken by the board or the Board of Commissioners or Examiners. The annual report shall be submitted on or before the last day of February for accidents occurring during the previous year.

2. The report shall be submitted in whatever form the Department of Transportation and Development may require.

C. The board shall submit an accident report to the general counsel of the Department of Transportation and

Development in those accidents in which state property is involved or damaged as soon as practically possible.

1. The report shall include a description of the circumstances surrounding the accident, including but not limited to the time and location, the state property involved or damaged, the name of the pilot, the name of the vessel, the name of the vessel's agent, and the name of the insurer of the vessel.

2. The report shall be submitted in whatever form the Department of Transportation and Development may require.

AUTHORITY NOTE: Promulgated based on R.S. 34:1135.I, R.S. 34:1135.K.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:991 (May 2010).

§15223. Rules Supplied to State Commissioned Pilots

A. The board shall provide to all state commissioned pilots a copy of the board's rules and regulations.

B. In compliance therewith the Board of Examiners or Commissioners shall on behalf of the board furnish the state commissioned pilots they regulate a copy of the board's rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1135.L.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:991 (May 2010).

§15225. Evidentiary Issues

A. Considering the purpose of the board and the Boards of Commissioners or Examiners is to regulate state commissioned pilots and not to determine issues of liability or negligence, certain prohibitions concerning the use of its reports and testimony from their members and employees are hereby adopted:

1. The discovery of and admissibility as evidence in a civil proceeding of the reports of the board or the Board of Commissioners or Examiners (other than in an administrative proceeding initiated by the board or the Board of Commissioners or Examiners) involving a state commissioned pilot is prohibited. The term "reports" includes findings of fact, opinions, recommendations, deliberations, and conclusions.

2. The use of any form of discovery, including depositions of members of the board or the Board of Commissioners or Examiners, its employees, investigators, counsel, and prosecutors, and the compelling or allowing of their testimony in any civil or administrative proceeding relevant to the performance of their duties is prohibited, their testimony is not admissible, and the report is not considered the report of an expert.

3. The board and the Board of Commissioners or Examiners, as well as its members, employees, investigators, counsel, and prosecutors may enforce these provisions by means of injunctive relief.

4. If the court grants injunctive relief as sought by the board and the Board of Commissioners or Examiners, or any of its members, employees, investigators, counsel, and prosecutors, the court may award to the board, the Board of Commissioners or Examiners, or any of its members, employees, investigators, counsel, or prosecutors attorneys fees and costs incurred against the party attempting to use the information prohibited in R.S. 34:1135.N.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1135.N.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Louisiana River Pilot Review and Oversight, LR 36:991 (May 2010).