

PORT OF NEW ORLEANS - BAR PILOTS

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.1, 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.

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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

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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 officer.

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.

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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.

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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;

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(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).

§411. 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

PROFESSIONAL AND OCCUPATIONAL STANDARDS

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).