

RULE

**Office of the Governor
Board of Louisiana River Pilot Review and Oversight**

General Provisions
(LAC 46:LXX.Chapters 150 and 152)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Louisiana River Pilot Review and Oversight hereby promulgates rules and regulations. The rules and regulations are in the public's interest and will promote public safety. This board has a strong commitment to the public due to the safety sensitive nature of the duties performed by state commissioned pilots. Chapter 150 pertains to the general provisions of the board. Chapter 152 pertains to the general provisions of the board as it relates to domicile, meetings and officers of the board as well as the powers and duties of the board.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

LXX. River Pilots

**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 §152117 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 §152107 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 §152121.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 §152107.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 §152107.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 §152109 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 §150105 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 §152119.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 §150105 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).

Richard Ganucheau
Chairman

RULE

**Office of the Governor
Boxing and Wrestling Commission**

Boxing and Wrestling Standards (LAC 46:XI.Chapter 1)

The Louisiana State Boxing and Wrestling Commission, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(b) and R.S. 49:967(D), has adopted the following Rule. This Rule is necessary to further promote the safety of contestants, other participants and spectators in that it supplements the existing §108, "Medical Requirements," to require participants in all sports under the jurisdiction of The Louisiana State Boxing and Wrestling Commission to provide copies of negative HIV, Hepatitis B and C test results directly to the Louisiana State Boxing and Wrestling Commission or an approved representative of the commission at least five days prior to any sanctioned event.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XI. Boxing and Wrestling

Chapter 1. General Rules

§108. Medical Requirements

A. Each contestant participating in any sport under this commission's jurisdiction must furnish to the commission physician a certified medical certificate evidencing that the contestant has been tested for HIV, Hepatitis B and Hepatitis C and said test results are negative. Said tests and certificates shall be dated not more than six months prior to the scheduled event and said certificate is to be presented at least five business days prior to any event to the event coordinator or other approved commission official with the only exception to be those allowed specifically by the coordinator on a case by case basis until such time that a national clearinghouse/database has been contracted by this commission for verification of these medical tests.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64, and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 32:242 (February 2006), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 34:1601 (August 2008), LR 35:53 (January 2009), LR 36:992 (May 2010).

Patrick C. McGinity
Attorney

1005#033

RULE

**Office of the Governor
Commission on Law Enforcement and
Administration of Criminal Justice**

Peace Officer Training (LAC 22:III.4703)

In accordance with the provision of R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, and R.S. 40:905 et seq., which is the Administrative Procedure Act, the Peace Officer Standards and Training Council hereby has amended rules and regulations relative to the training of peace officers.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

**Part III. Commission on Law Enforcement and
Administration of Criminal Justice**

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4703. Basic Certification

A. ...

1. Level 1 Certification for Basic Law Enforcement Peace Officers

a. The student will complete a basic training course with the minimum number of training hours specified by the council for full certification. Level 1 certification requires that the student meet the POST requirements for firearm certification.

b. - c. ...

2. Level 2 Certification for Basic Correctional Peace Officer

a. The student will complete a training course with the minimum number of training hours specified by the council and is limited to those peace officers whose duties are the care, custody, and control of inmates. The training course consists of corrections core curriculum plus a sufficient number of hours to obtain POST certification. POST Firearm certification for Level 2 students is required (effective March 26, 2001).

A.2.b. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:663 (April 1999), LR 27:49 (January 2001), LR 28:475 (March 2002), LR 31:2008 (August 2005), LR 35:1235 (July 2009), LR 36:992 (May 2010).

Joseph M. Watson
Executive Director

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