

RULES AND REGULATIONS
GOVERNING
PILOTS AND PILOTAGE ON THE HOUSTON SHIP CHANNEL
BETWEEN THE GALVESTON BAR AND TURNING BASIN

The Rules and Regulations (“Rules”) contained herein are adopted to carry out the Houston Pilots Licensing and Regulatory Act, Chapter 66 of the Texas Transportation Code (Vernon 2008) (the “Act”), and not to supersede specific provisions of the Act. Thus, in the event of conflict between the Rules and the Act, the Act shall control.

1. APPLICABILITY.

The Rules contained herein pertaining to the appointment of certain committees and regulation of pilots are applicable to all Branch Pilots and Deputy Pilots commissioned or appointed to act as such on the Houston Ship Channel between Galveston Bar and Turning Basin, Houston, Texas.

2. APPOINTMENT OF A PILOT BOARD APPLICATION REVIEW COMMITTEE.

- A. A Pilot Board Application Review Committee (the “ARC”) shall be appointed annually by the Chairman of the Board of Pilot Commissioners (“Pilot Board”), with the appointees to such ARC subject to approval by the Pilot Board. The ARC shall be composed of voting members from the Houston Pilots Association, the Port of Houston maritime industry, the Harris County community at large, and the Port of Houston Authority (“Port Authority”). The ARC shall be chaired by a Port Authority voting member. It is the intent of this provision that the ARC, to the extent possible, generally reflect the diversity of the population within Harris County.
- B. The ARC shall review each applicant for Branch Pilot or Deputy Pilot (“Applicant”) as set out in Section 4(C) of these Rules.
- C. The ARC shall review applications for renewal of commissions for Branch Pilots as set out in Section 5(A) of these Rules.

3. APPLICANTS’ QUALIFICATIONS.

A. DEPUTY PILOT

- 1) To be eligible for a certificate as a Deputy Pilot pursuant to Section 66.034 of the Act, a person must:
 - (a) be at least twenty five (25) and less than sixty eight (68) years of age;
 - (b) be a United States citizen; and
 - (c) be licensed by the U.S. Coast Guard as a First Class Pilot of Steam and Motor Vessels, for Galveston Bar and Houston Ship Channel to Turning Basin, Houston, Texas,

unlimited tonnage and current unlimited radar endorsement.

2) The Applicant must be found by the Pilot Board to be in good mental and physical health, to have good moral character, and to possess the requisite skill to perform competently and safely the duties of a Deputy Pilot.

B. BRANCH PILOT

1) To be eligible for a commission as a Branch Pilot pursuant to Section 66.033 of the Act, a person must:

- (a) be at least twenty five (25) and less than sixty eight (68) years of age;
- (b) be a United States citizen;
- (c) as of the date that the commission is issued, have resided in the State of Texas for a continuous period of not less than one year;
- (d) be licensed by the U.S. Coast Guard as a First Class Pilot of Steam and Motor Vessels, for Galveston Bar and Houston Ship Channel to Turning Basin, Houston, Texas, unlimited tonnage and current unlimited radar endorsement.
- (e) have at least three years service as a Deputy Pilot or equivalent service piloting vessels of at least 5,000 gross tons on the Houston Ship Channel and Galveston Bar;
- (f) have exercised command or have exercised control of navigation of vessels such as he or she would pilot; and
- (g) have extensive experience in the docking and undocking of oceangoing vessels.

2) The Applicant must be found by the Pilot Board to be in good mental and physical health, to have good moral character, and to possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a Branch Pilot.

4. APPLICATION REQUIREMENTS.

A. DEPUTY PILOT

Any person who may desire to be appointed as a Deputy Pilot shall file an official application, in writing, with the Secretary to the Pilot Board. The application may be obtained from the office of the Secretary and it must include the following attachments:

1) Doctor's written report of a physical examination (performed within three months of application by a doctor approved by the Pilot Board) indicating that Applicant is physically and mentally qualified to perform the duties required of a Deputy Pilot. In the event the results of the physical examination raises the issue of an Applicant's ability to perform the duties required of a Deputy Pilot, the Applicant shall have the right to have his or her own doctor confer with the approved doctor. If both doctors cannot mutually recommend a decision to the Pilot Board, a third impartial doctor approved by the parties will examine the Applicant and may confer with the other two doctors. The recommendation of the third doctor shall be conclusive.

2) Copy of birth certificate or other proof of age.

3) Evidence of at least two (2) years experience on the Houston Ship Channel between Galveston Bar and Turning Basin, Houston, Texas, with recent experience of not less than six (6) round trips thereon within the previous six months. One such trip shall have been made within thirty (30) days prior to date of application for initial appointment.

In lieu of the experience required in paragraph (3) above, the Applicant may draw without reference to other materials an accurate chart of the Houston Ship Channel showing all prominent features of the route, courses, distances, shoals, aids-to-navigation, depths; widths, Vessel Traffic System reporting points and other features between the Galveston Bar and Turning Basin, Houston, Texas.

4) Names of three personal references who have known Applicant for at least five years.

5) Evidence of ability to enter into faithful performance bond as required by Tex. Transp. Code §66.039 in the amount of Twenty Five Thousand Dollars (\$25,000.00), payable to the Governor of the State of Texas, conditioned upon compliance with the laws, rules, and orders relating to pilots and upon the faithful performance of Deputy Pilot duties. The term of the required bond shall be concurrent with the term of commission.

6) A signed statement that the Applicant agrees to be bound by the Act and these Rules as provided for thereunder.

7) A release permitting a complete background check of the Applicant into all matters pertinent to the position of Deputy Pilot, such check to be conducted by the Secretary of the Pilot Board pursuant to a checklist compiled by the ARC.

8) Evidence that Applicant has at least six (6) years sea-going experience as an unlimited licensed deck officer or six (6) years inland operating experience and a 1,600 ton master's license with current unlimited radar endorsement.

B. BRANCH PILOT

Any person who may desire to be commissioned a Branch Pilot shall file an official application in writing with the Secretary to the Pilot Board. The application may be obtained from the office of the Secretary, and it must include the following attachments:

- 1) Evidence of at least three years experience on the Galveston Bar and Houston Ship Channel to the Turning Basin, Houston, Texas, with recent experience of not less than six (6) round trips thereon within the previous six months, provided, however, when a Deputy Pilot seeks to become or is applying to become a Branch Pilot, such evidence must be in the form of sworn statements from others and business records in the control of others. One such trip shall have been made within thirty (30) days prior to date of application for initial appointment.
- 2) Doctor's written report of a physical examination (performed within three (3) months of application by a doctor approved by the Pilot Board) indicating that Applicant is physically and mentally qualified to perform the duties required of a Branch Pilot. In the event the results of the physical examination raises the issue of an Applicant's ability to perform the duties required of a Branch Pilot, the Applicant shall have the right to have his or her own doctor confer with the approved doctor. If both doctors cannot mutually recommend a decision to the Pilot Board, a third impartial doctor approved by the parties will examine the Applicant and may confer with the other two doctors. The recommendation of the third doctor shall be conclusive.
- 3) Copy of Applicant's current U. S. Coast Guard License, as First Class Pilot of Steam and Motor Vessels, for Galveston Bar and Houston Ship Channel to Turning Basin, Houston, Texas, unlimited tonnage, and current unlimited radar endorsement.
- 4) Evidence of ability to enter into faithful performance bond as required by Tex. Transp. Code §66.039 in the amount of Twenty Five Thousand Dollars (\$25,000.00), payable to the Governor of the State of Texas, conditioned upon compliance with the laws, rules, and orders relating to pilots and upon the faithful performance of Branch Pilot duties. The term of the required bond shall be concurrent with that of the term of commission.
- 5) Documentary evidence sufficient to show that as of the date the commission is issued, the Applicant has resided in the State of Texas for a continuous period of not less than one year.
- 6) When a Deputy Pilot is applying to become a Branch Pilot, a written recommendation from the Branch Pilot who originally appointed the Deputy Pilot or the Presiding Officer of the Houston Pilots Association.
- 7) A signed statement that the Applicant agrees to be bound by the Act

and these Rules as provided for thereunder.

8) A release permitting a complete background check of the Applicant into all matters pertinent to the position of Branch Pilot, such check to be conducted by the Secretary of the Pilot Board pursuant to a checklist compiled by the ARC.

C. APPLICATION REVIEW AND RENEWAL

1) The Secretary shall keep a record of each application received, the date of receipt and the date and description of each action taken on the application.

2) The ARC shall review each application and shall determine whether each Applicant has met the qualifications prescribed by the Act and complied with these Rules. Such review shall be conducted at a meeting to be held at least once each quarter for this specific purpose. Reasonable notice of such meetings shall be given to each Pilot Board member, each ARC member, the Applicant, and any other parties who have requested notice. Each application received shall be reviewed no later than the quarter following its receipt. If any application submitted is incomplete, the Applicant shall be promptly notified of the deficiency and provided an opportunity to bring the application into compliance. The ARC shall promptly notify each Applicant whether the Applicant has been deemed qualified by the ARC. The ARC's determination whether a Deputy Pilot Applicant has met the qualifications prescribed by the Act and complied with these Rules expires if the Applicant is not appointed as a Deputy Pilot within five (5) years following such approval. Such applications shall be removed from the ARC Committees files and destroyed pursuant to Tex. Loc. Gov't. Code Title 6 and other applicable laws and regulations. The recommendations of the ARC as to those Branch Pilot Applicants who are qualified under the Act shall be submitted for review and approval to the Pilot Board.

3) The ARC shall maintain a file containing the applications of all qualified Applicants, and from time-to-time provide an updated listing thereof to the Houston Pilots Association. The Secretary, on behalf of the ARC, shall then recommend to the Pilot Board such action as is appropriate for the approval of a Branch Pilot, and following notification to the ARC by the Houston Pilots Association, a Deputy Pilot.

4) The Pilot Board shall accept or reject each ARC recommendation within sixty (60) days of receipt of such recommendation and shall notify, within ten (10) days in writing, any Applicant whose application for a certificate or commission has been denied, stating the basis for such rejection.

5) Upon approval by the Pilot Board of the ARC's recommendation, the Secretary to the Pilot Board shall advise the Applicant that he or she is eligible for appointment as a Deputy Pilot and shall advise the Presiding

Officer of the Houston Pilots Association that the Applicant is among the pool of persons qualified to serve as a Deputy Pilot. In the event that any Applicant in the qualified pool is appointed as a Deputy Pilot by a commissioned Branch Pilot and after such Applicant posts the required bond, the ARC will, at that time, confirm that the Applicant continues to meet all requirements.

6) When a Deputy Pilot has completed his or her training period, he or she shall apply for appointment as Branch Pilot as set out in Section 4(B). Upon approval by the Pilot Board of the ARC's recommendation and the posting of a bond, the Pilot Board shall forward same to the Governor of the State of Texas, recommending issuance of the commission for the Branch Pilot for a four year period, provided no Branch Pilot may furnish pilot services under the authority of his Commission once attaining the age of sixty eight (68) years as set forth in Tex. Transp. Code §66.040(a).

7) Before entering into service as a Branch Pilot or Deputy Pilot, the Applicant shall take the official oath.

8) No more than one Deputy Pilot certificate may be approved for issuance to any one person within any period of five (5) consecutive years.

5. RENEWAL OF COMMISSIONS AND CERTIFICATES AND REVIEW OF QUALIFICATIONS

A. BRANCH PILOT

1) A Branch Pilot's commission expires four years from the date of its issuance. No later than one hundred twenty (120) days prior to the expiration of a Branch Pilot's commission, the Branch Pilot shall apply in writing for renewal to the Secretary to the Pilot Board. The application shall meet the requirements described in Section 4(B) of these Rules.

2) The Secretary shall keep a record of each application for renewal received, the date of receipt and the date and description of each action taken on the application.

3) The ARC shall review each application for renewal and shall determine whether each Applicant continues to meet the qualifications prescribed by the Act and these Rules or whether probable cause may exist for not renewing the commission.

4) Upon determination that the Branch Pilot continues to meet the qualifications for commissioning prescribed by the Act and these Rules and that no probable cause may exist for not renewing the commission, the ARC shall recommend that the Pilot Board recommend to the Governor that the Branch Pilot's commission be renewed.

5) In the event a temporary medical condition renders a Branch Pilot not medically competent at the time of application for, or renewal of, a

Branch Pilot's commission, and said Applicant's physician indicates the condition will resolve and Applicant will be fit-for-duty in the future, the issuance of the commission may be approved, provided however, the Branch Pilot shall surrender the commission to the Secretary of the Pilot Board upon receipt and shall not pilot vessels until the condition has resolved and the physician approved by the Pilot Board as per Section 4(B)(2) has declared the Pilot fit-for-duty.

6) If the ARC determines that the Applicant for renewal of a Branch Pilot's commission does not otherwise meet one or more of the qualifications for commission prescribed by the Act or these Rules as provided for under the Act, the ARC shall inform the Secretary that probable cause may exist for not renewing the Branch Pilot's commission.

7) The Secretary shall then recommend to the Pilot Board that it consider whether probable cause exists not to renew Branch Pilot's commission, and give notice of such recommendation to the Branch Pilot.

8) If the Pilot Board determines that it has probable cause not to renew such Branch Pilot's commission, the board shall notify the Branch Pilot of that determination not less than sixty (60) days before expiration of the commission and, on request, shall offer the Branch Pilot the opportunity for a hearing after proper notice to consider whether or not cause exists for not renewing the commission. The Branch Pilot shall be provided at least thirty (30) days written notice of the hearing date.

9) If the Pilot Board finds at the conclusion of the hearing that no probable cause exists for nonrenewal, the Pilot Board shall recommend that the Governor renew the commission for another term.

10) If a Branch Pilot does not contest the Board's decision not to renew the commission or if the Pilot Board after the hearing determines that there is probable cause not to renew the commission, the Pilot Board shall recommend to the Governor that the commission not be renewed.

11) Denial of renewal of a Branch Pilot's commission does not prevent the former Branch Pilot from applying for a new commission and being reappointed by the Governor if the former Branch Pilot meets all the qualifications for a commission under the Act.

B. DEPUTY PILOT

A Deputy Pilot's certificate expires three (3) years from the date of its issuance and is not renewable.

6. NAVIGATION GUIDELINES.

A. The following guidelines shall govern the routine transit of the Houston Ship Channel between Galveston Bar and the Turning Basin, Houston, Texas. Request for variance from these restrictions must be written and reach the

Secretary of the Pilot Board at least five (5) working days prior to the date such variance is required. Upon receipt of such a request for variance, the Secretary shall promptly forward such request to the appropriate parties for decision.

- B. These guidelines may be varied if prior arrangements are made between the vessel owner and/or agent and the Branch Pilot or Deputy Pilot (“Pilot”). Upon request, the Pilot shall notify the Secretary to the Pilot Board of variances granted.
- C. Guidelines:

BOLIVAR ROADS TO BARBOURS CUT

Maximum Vessel Size – 950 feet LOA; 135 feet BEAM

BARBOURS CUT TO BAYTOWN

Maximum Vessel Size – 900 feet LOA; 135 feet BEAM

BAYTOWN TO BOGGY BAYOU (SHELL)

Maximum Vessel Size – 860 feet LOA; 120 feet BEAM

BOGGY BAYOU TO SIMS BAYOU (LYONDELL)

Maximum Vessel Size – 750 feet LOA; 116 feet BEAM

SIMS BAYOU TO HOUSTON TURNING BASIN

Maximum Vessel Size – 750 feet LOA; 106 feet BEAM

Vessels exceeding 700 feet LOA or 37 feet draft will be restricted to daylight passage only, between Sims Bayou and the Houston Turning Basin. Permitted draft may be less than 37 feet because of conditions of the Houston Ship Channel or tide.

ENTIRE LENGTH OF HOUSTON SHIP CHANNEL

Dead ships will be restricted to handling/shifting during daylight hours only.

LNG and LPG Tank Ships exceeding 550 feet LOA will be restricted to daylight transit only.

- D. The above limitations are based on normal traffic and weather conditions. Variances from the above guidelines may be imposed at times by Federal, State, local authorities or the Pilot because of weather, prevailing channel conditions, or other reasons.
- E. These Navigation Guidelines are guidelines made in the interest of safety. They are not intended to limit or supersede the on-scene discretion of an

individual Pilot or ship's Master as they navigate vessels on the Houston Ship Channel between Galveston Bar and the Turning Basin, Houston, Texas. The Pilot and Master on the vessel are best situated to evaluate the specific situation confronting a vessel and determine a proper course of action. There may arise situations in which actions that depart from or conflict with these Guidelines may be necessary to address special circumstances or avoid immediate danger. The Pilot, with approval of the ship's Master, may determine a variance from the Guidelines is appropriate without prior written request or approval.

7. WHEN PILOTAGE REQUIRED.

Every foreign vessel and every American vessel engaged in foreign trade, including vessels being moved dead, when underway on navigable waters of the Houston Ship Channel between Galveston Bar and the Turning Basin, Houston, Texas shall employ a Pilot holding a valid commission or appointment as a Branch or Deputy Pilot.

8. ORDERING OF PILOTS.

Requests for Pilots must be received by the Pilot's dispatch agent and firm boarding times provided as indicated below:

INBOUND TRAFFIC: Eight (8) hours prior to required Pilot boarding unless the vessel is in Galveston, Texas City or at anchorage, in which case only four (4) hours shall be required.

EXCEPTIONS: Cancellation or revision, not to exceed one hour, of the original estimated boarding time, may be made prior to four (4) hours of such original estimate without penalty.

Should a vessel arrival be delayed two hours or more beyond the boarding time originally ordered by agent/operator, a Pilot shall be provided within four (4) hours of the last notice to the Pilot's dispatch agent. Such delays shall entitle the Pilot to additional fees as published in the current tariff.

OUTBOUND TRAFFIC OR SHIFTING: Two (2) hours prior to required Pilot boarding, with a preliminary notice of four (4) hours prior to boarding time.

Failure of the vessel to present itself ready for Pilot boarding and sailing at the appointed time and place shall entitle the Pilot to additional fees as published in the current schedule of pilotage rates.

9. PILOTAGE CHARGES.

A. Before the Pilot Board shall establish or change any pilotage rates, it shall

call a public hearing chaired by the Secretary. The rate hearing shall be held within the time prescribed in the Tex. Transp. Code §66.062(c), and notice of the hearing shall be provided by the party requesting a change in pilotage rates as provided in Tex. Transp. Code §66.062(d).

- B. At such hearing it shall be the responsibility of the party requesting a change in pilotage fees or charges to present to the Pilot Board all information required by law and such other relevant information supporting the necessity for such change at least ten (10) days before the date set for the hearing and said party shall submit such additional information as the Pilot Board may require.
- C. A proposed rate change shall be posted at building where the Pilot Board meetings are held for public inspection at least ten days prior to the effective date of adoption of said rate(s). New rates shall not be established less than one year after the Board has previously established rates unless emergency rates are established in accordance with the Act.
- D. The rates of pilotage charged by the pilots operating under the law and these regulations shall at all times be the rates established by the Pilot Board in accordance with the Act. A schedule of such rates shall at all times be on file in the office of the Secretary. No Pilot shall demand or receive any greater, lesser or different compensation for rendering pilotage service than the rates established by the Pilot Board. Any person who charges different rates shall be liable to each person charged for double the amount of pilotage.

10 COLLECTION OF PILOTAGE CHARGES.

- A. All invoices for pilot services shall be issued within fifteen (15) days after the services are rendered and shall contain a written demand for payment. Invoices shall be due and payable within ten (10) days of demand.
- B. Payments incident to the provisions of this section shall be the responsibility of the owner or agent of vessel for which service was ordered and performed in accordance with rates published in the current tariff. Failure to pay invoices for pilot services in accordance with the provisions of the foregoing paragraph shall constitute grounds for the refusal of future pilot services and other remedies provided by the Act if such invoices remain unpaid.

11. REVOCATION AND SUSPENSION.

On complaint or on its own motion, the Pilot Board may, after notice and hearing, if the Pilot Board finds that the Branch Pilot or Deputy Pilot ("Pilot") has committed any act deemed sufficient by the Act: (1) require that the Pilot undertake additional training, (2) issue a letter to the Pilot cautioning him or her with regard to the Pilot's actions (referred to as a Letter of Caution), (3) issue a letter to the Pilot reprimanding him or her with regard to the Pilot's actions, (referred to as a Letter of Reprimand) (4) suspend a Pilot's commission for not more than six (6) months; or (5) recommend to the Governor of the

State of Texas that the Pilot's commission be revoked. The Pilot Board may also: (1) take no action, or (2) issue a Letter of Commendation.

12. REPORT OF ACCIDENTS, CERTAIN CONVICTIONS AND CHANGES IN PHYSICAL AND MENTAL CONDITION.

Any Pilot appointed or commissioned in the State of Texas, shall report the following to the Secretary of the Pilot Board:

- A. All marine casualties in which the Pilot was involved, within seven (7) days following such casualty or accident.
- B. The Pilot's conviction on any charges other than those involving a non-alcohol-related traffic violation, within seven (7) days following such conviction.
- C. Any significant change in physical or mental condition since the Pilot's most recent physical examination that negatively affects the Pilot's ability to perform the Pilot's duties skillfully, efficiently and safely, within two (2) days of a physician's determination of such change.
- D. The observance of any Pilot performing pilot services as defined by the Act while under the influence of drugs or alcohol or in a physical or mental condition that negatively affects the ability of the Pilot to perform pilot services skillfully, efficiently and safely.

13. INVESTIGATION OF COMPLAINTS AND ACCIDENTS.

- A. The Secretary may refer complaints alleging violations of these Rules and reports of marine casualties to the Pilot Board Investigation and Recommendation Committee ("PBIRC") for investigation, hearing and recommendation to the Pilot Board. The PBIRC shall be appointed annually by the Chairman of the Pilot Board, with the appointees to such PBIRC subject to approval by the Pilot Board. The PBIRC shall be comprised of voting members from the Houston Pilots Association, Port of Houston maritime industry, and the Port Authority; and nonvoting advisory members from the U. S. Coast Guard. The PBIRC shall be chaired by a Port Authority voting member. It is the intent of this provision that the members of the PBIRC, to the extent possible, generally possess the industry expertise and background necessary to carry out the duties of the PBIRC. The Chairman of the PBIRC may appoint a PBIRC Advisory Subcommittee comprised of the PBIRC Chairman, the Presiding Officer of Houston Pilots Association, and three other voting members of the PBIRC. The function of the Advisory Subcommittee is to periodically review marine casualties to determine if they warrant a full hearing before the PBIRC, or whether the matter does not warrant such a hearing and may be closed to file. The Advisory Subcommittee procedures are found in Section 13(B) below.

Any person subject to investigation by the PBIRC shall have the right to advice of counsel. The PBIRC chairperson shall advise all persons having

been the subject of investigation by the PBIRC of the findings and recommendations upon conclusion of the investigation and prior to submission of such findings and recommendations to the Pilot Board.

B. The following procedures shall govern the conduct of investigations and hearing by the PBIRC and the Pilot Board:

1) The Chairman of the PBIRC shall, whenever he deems it appropriate, refer any complaints concerning or notice taken of any marine casualties and/or alleged violations of the Pilot Rules to the PBIRC's compliance coordinator, who shall be appointed by and serve at the direction of the Pilot Board (the "Compliance Coordinator"). The function of the Compliance Coordinator shall be to gather, summarize, and present information regarding a marine casualty to the PBIRC in a neutral fashion. The Compliance Coordinator's function is not to present recommendations to the PBIRC. It is the duty of the PBIRC, and not the Compliance Coordinator, to make recommendations to the Pilot Board.

2) (a) Immediately after notification of the marine casualty that is the basis of the complaint or the subject of the PBIRC's notice (the "Incident"), the Compliance Coordinator shall gather available, relevant information, including records and transcripts of any United States Coast Guard investigation, and any necessary additional statements from witnesses and others with information about the incident.

(b) The Compliance Coordinator shall then provide the PBIRC Chairman and the Advisory Subcommittee the following: (1) a copy of the information gathered, and (2) a neutral summary thereof. The PBIRC Chairman shall then convene a meeting of the Advisory Subcommittee either in person or by teleconference, to review any materials gathered by the Compliance Coordinator relating to any new Incident(s). The Compliance Coordinator shall present the materials to the Advisory Subcommittee.

(c) The PBIRC Chairman and the Advisory Subcommittee shall determine if the Incidents being reviewed warrant a full hearing before the entire PBIRC, or whether the matter does not warrant such a hearing and may be closed to file.

3) In cases where the Advisory Subcommittee has determined a full hearing is warranted, the Compliance Coordinator shall provide (1) a copy of the information gathered, and (2) a neutral summary thereof, to all members the PBIRC. The Compliance Coordinator shall also provide such summary and the information gathered, to the Deputy Pilot or Branch Pilot who might be affected by the investigation ("Pilot Affected") at least thirty (30) days prior to any scheduled hearing. In the event any such information is subject to third-party confidentiality restrictions, the Pilot Affected shall agree to those restrictions, provided the Pilot Affected has the right to use such information for proceedings under these Rules and the Act. The Compliance Coordinator shall also notify the Pilot Affected of the opportunity to respond in writing and/or appear with

counsel before the PBIRC at least thirty (30) days prior to any scheduled hearing.

4) The Pilot Affected shall have twenty (20) working days in which to provide to the PBIRC a statement in writing, and any additional information, including additional statements in writing from witnesses and others familiar with the Incident. Such information should be provided within seven (7) days prior to the hearing; however, failure to provide such information by that time does not preclude the offering of additional evidence at such hearing. If such information is provided less than seven (7) days prior to a hearing, the PBIRC may, at its discretion, reschedule such hearing.

5) The PBIRC shall provide the Pilot Affected the opportunity to present a statement and/or statements from other parties and answer questions and/or present witnesses at a hearing before the PBIRC. The presentation of evidence by the Compliance Coordinator and Pilot Affected and any sworn testimony before the PBIRC shall be open to the public and transcribed by a certified court reporter. Notwithstanding the foregoing sentence, witnesses shall be excluded from hearing the testimony of other witnesses prior to giving their own testimony, but the Pilot Affected shall not be excluded from hearing the testimony of any witness. The PBIRC's deliberations shall be closed to the public.

6) Following consideration of materials gathered by the Compliance Coordinator, or presented by the Pilot Affected, or of any oral presentations, the PBIRC shall prepare and vote upon proposed findings and recommendations ("Proposed Findings and Recommendations") to be presented to the Pilot Board. Two-thirds of the then serving members of the PBIRC shall constitute a quorum to act, with the majority of such quorum controlling. Prior unrelated incidents may not be considered by the PBIRC when making its determination. After approving its Proposed Findings and Recommendations as stated above, the PBIRC can review any sanctions issued to the Pilot Affected during the five (5) years prior to the incident in question to determine if there are any recurring issues of concern. If after a vote the PBIRC determines that there is a recurring issue of concern, it may supplement its Proposed Recommendations and Findings to the Pilot Board to include a recommendation for additional training for the Pilot Affected. The PBIRC shall deliver the Proposed Findings and Recommendations along with a tally of the PBIRC vote on the Proposed Findings and Recommendations, copies of all materials it considered and the transcript of the hearing to the Pilot Board for its consideration.

7) Prior to presentation of the Proposed Findings and Recommendations, the vote tally and material to be considered by the Pilot Board, the PBIRC shall provide a copy of the Proposed Findings and Recommendations to the Pilot Affected, who shall have fourteen (14) days in which to make a Request for Reconsideration in a written document filed with the Chairman of the PBIRC. Such Request shall state the grounds and cite any evidence. The determination of whether to grant or deny such Request shall be solely within the discretion of a majority of the PBIRC members who participated in the

hearing at issue.

8) The PBIRC members who participated in the hearing at issue shall act on any Request for Reconsideration within ten (10) days from the date it is received and, if such request is granted, conduct any further proceedings it deems appropriate. Such action may include another hearing, or a conference telephone call convened by the Chairman of the PBIRC. If no Request for Reconsideration is received, the PBIRC shall present the Proposed Findings and Recommendations to the Pilot Board within fourteen (14) working days from the date the Proposed Findings and Recommendations are provided to the Pilot Affected.

14 HEARING BEFORE THE PILOT BOARD.

- A. The Pilot Affected has a right to a hearing before the Pilot Board pursuant to Tex. Transp. Code §66.043. The Secretary shall place the PBIRC's Proposed Findings and Recommendations on the Pilot Board agenda for its consideration at (i) its next regularly scheduled meeting occurring at least thirty (30) days after the Secretary's receipt of the PBIRC materials, or (ii) a special meeting called for such purpose, upon application of a Pilot Affected, and in the sole discretion of the Chairman of the Pilot Board.
- B. The Secretary of the Pilot Board shall notify the Pilot Affected in writing of the receipt of the Proposed Findings and Recommendations and of the opportunity to appear before the Pilot Board at least twenty (20) days before the Pilot Board considers the Proposed Findings and Recommendations. The notice shall inform the Pilot of his or her right to submit materials in writing to the Pilot Board, appear with counsel before the Pilot Board, and present and examine witnesses at the Pilot Board hearing. The Compliance Coordinator shall provide the PBIRC materials to any Pilot Affected requesting them.
- C. A Pilot Affected shall submit to the Pilot Board his or her statement in writing, statements in writing from witnesses and others familiar with the matter, and other relevant materials that he or she intends to rely upon or introduce at the Pilot Board hearing, including materials supplementing those presented at the PBIRC's hearing(s) on the matter, no later than seven (7) days prior to the date of the Pilot Board's meeting. If the materials are not timely submitted, the Pilot Board may in its sole discretion, consider the tardy materials, refrain from considering the tardy materials, or the Chairman of the Pilot Board may reschedule the Pilot Board hearing.
- D. The Compliance Coordinator shall present the Proposed Findings and Recommendations to the Pilot Board. Counsel for Pilot Affected, or the Pilot Affected, shall be allowed an opportunity to present the evidence described in Section 14(C) above, along with any new evidence, and any written argument or oral argument on behalf of the Pilot Affected. Such proceedings shall be transcribed by a certified court reporter and be open to the public.
- E. Upon consideration of the entire record provided by the PBIRC, evidence and

argument on behalf of the Pilot Affected, the presentation by the Compliance Coordinator, and any other matters, the Pilot Board shall within forty-five (45) days issue an order that either adopts, changes or rejects the Proposed Findings and Recommendations. The order shall include the action to be taken by the Pilot Board based on the finding and conclusions it adopts. The Recommendations of the PBIRC shall not be effective until adopted by the Pilot Board.

F. The action taken by the Pilot Board may include, without limitation, a decision to:

- take no action,
- issue a Letter of Commendation,
- require that the Pilot Affected undertake additional training,
- Issue a Letter of Caution to the Pilot Affected cautioning the Pilot Affected with regard to the Pilot Affected's actions,
- issue a Letter of Reprimand,
- suspend for up to six (6) months any Branch Pilot commission or Deputy Pilot certificate held by parties determined to be at fault in the Incident, or
- recommend to the Governor that the Branch Pilot commission or Deputy Pilot certificate held by the Pilot be revoked.

G. The Pilot Affected shall be notified of the decision of the Pilot Board and shall have twenty (20) working days in which to file a Request for Rehearing. Such Request shall state the grounds and cite any evidence supporting a rehearing. A majority of those Pilot Board members who presided at the hearing at issue shall act on the Request for Rehearing within thirty (30) days, and if such request is granted, conduct any further proceedings deemed appropriate. If the Pilot Board denies the Request for Rehearing, such action is considered final and appealable to district court.

H. In the event that any member of the PBIRC or Pilot Board member shall have a direct conflict of interest with respect to a matter being investigated (e.g., is a Pilot who is the subject of an investigation, or a business owner whose property, or other proprietary interest, has been damaged in an incident which is under investigation), such member shall not serve on the PBIRC or Pilot Board for the consideration of the matter which has created the conflict. No person who is so affected shall be replaced on the PBIRC or Pilot Board, which will undertake such investigation without the conflicted member or members.

15. GENERAL.

A. Every Pilot, while acting under the authority of a certificate or commission

as Deputy Pilot or Branch Pilot, shall act with safety as the highest priority and, when possible without sacrificing the interest of safety, in the best interest of the vessel owner, giving primary consideration to the safety of the vessel, its crew and cargo, and comply with the Act. No Pilot, either individually or in concert with other pilots, shall arbitrarily withhold piloting services when such services are requested in accordance with these Rules, except as provided by Tex. Transp. Code §66.043(a). To do otherwise will violate the Act and subject such Pilot to disciplinary action including suspension or revocation of commission or certificate.

- B. In obeying and construing these Rules, due regard shall be had to all dangers of navigation and recognition is hereby given to the responsibility of the individual Pilot to exercise judgment as to any special circumstance which may render a departure from the Rules and Navigational Guidelines contained herein necessary in order to avoid immediate danger.
- C. The Pilot Board, on written complaint or on its own motion, may institute an investigation or hearing, or both, pursuant to its duties set forth in Tex. Transp. Code §66.017.
- D. No later than ninety (90) days following the written request of the Pilot Board or Secretary, the Houston Pilots Association shall provide the Secretary a report of operations and finances for the preceding fiscal years, containing such specific financial information required by Tex. Transp. Code §66.063(a) and other information as the Pilot Board or Secretary may request.
- E. The Pilot Commission is a political subdivision of the State of Texas and is subject to the provisions of the Texas Public Information Act, Chapter 552 of the Tex. Gov't. Code ("PIA"). If a request is made under the PIA for any Branch Pilot or Deputy Pilot records held by the Pilot Commission, or the Port Authority acting on its behalf, in connection with these Rules, the Port Authority, on behalf of the Pilot Commission, shall notify the Houston Pilots Association of the requests, and take such other actions as required under Tex. Gov't. Code §552.305, regarding information involving privacy or property interests of a third party. Without limiting the foregoing, if a request is made for information pertaining to pilots or Applicants that may be deemed Safety Sensitive Information ("SSI") as defined by federal law and as contemplated by Attorney General Open Records Letter OR2007-13737, the Port Authority, on behalf of the Pilot Commission, shall decline to release the information for the purpose of requesting an attorney general decision, and shall notify the Presiding Officer of Houston Pilots Association of the request so that the pilot(s) affected may have the opportunity to submit to the attorney general reasons why the information should be withheld. The information shall thereupon be handled by Pilot Commission and the Port Authority acting on its behalf, as the attorney general determines. Records held under the Rules by the Pilot Commission, or by the Port Authority on behalf of the Pilot Commission, shall be subject to the Port Authority's Records

Management Program.

- F. The Houston Pilot's Association shall provide, and the Secretary shall maintain, a roster of currently active Branch Pilots and Deputy Pilots. The roster shall include each Pilot's name, address, birth date, formal education data, date of certification as Deputy Pilot, date of commissioning as Branch Pilot, Coast Guard licenses held, and date of initial and subsequent issue, and detailed employment history including military service, and specific dates of employment. The Houston Pilot's Association shall update this information provided to the Secretary as necessary from time to time to maintain its accuracy and upon the request of the Secretary.
- G. In all of their duties and actions, including the provision of any assistance in obtaining experience required for commissioning, the Houston Pilots Association, Pilots, and Pilot Board shall not sanction discriminatory practices or discriminate against any Applicant or potential applicant, Branch Pilot, or Deputy Pilot on account of race, religion, sex, ethnic origin or national origin.
- H. These Rules supersede any previously authorized Rules and shall remain in full force and effect until changed by the Pilot Board. The Pilot Board shall give at least ten days notice of its intention to adopt a rule by posting at the building where Port Commission meetings are held. All actions and proceedings of the Pilot Board are to be in compliance with Tex. Transp. Code §66.019 regarding the Open Meetings Law. ARC and PBIRC members acting under these Rules are deemed to be acting in a governmental capacity, to the extent permitted by law.