



## Proposed Regulation Agency Background Document

<b>Agency name</b>	DPOR/Board for Branch Pilots
<b>Virginia Administrative Code (VAC) citation</b>	18VAC45-20
<b>Regulation title</b>	Board for Branch Pilots
<b>Action title</b>	General Regulatory Review
<b>Date this document prepared</b>	January 14, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The Board intends to change its regulations to further define requirements and procedures for chemical testing, the physical examination requirements for initial licensing and license renewal, and additional criteria for the Medical Review Officer. Marijuana is to also be added to definitions. Other changes which may be necessary may also be considered.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly*

*chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Section 54.1-902 of the Code of Virginia authorizes the Board to promulgate regulations for a regulatory system. While the Board is mandated to establish regulations, the content of the regulations is up to the discretion of the Board.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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At its meeting in February 2009, the Board for Branch Pilots authorized staff to file a Notice of Intended Regulatory Action (NOIRA) for a general review to the Board's regulations including but not limited to review of the chemical testing regulations. At its meeting in October 2009, the Board for Branch Pilots approved proposed language. At its meeting in December 2009, the Board for Branch Pilots approved a Chemical Testing form. Other changes which may be necessary may also be considered.

**Substance**

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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The Board is proposing to perform a general review of the existing regulations regarding the physical examination requirements for initial licensing and license renewal; modify the existing reporting requirements for denial of licensure, denial of renewal and discipline. Establish additional criteria for the Medical Review Officer. Other changes which may be necessary may also be considered.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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The proposed changes further ensure regulants are competent for duty and thereby protects the health, safety and welfare of the public.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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The United States Department of Transportation requires random drug testing programs for federal licensees (a federal license is required for the state license). The Board wishes to implement a change to ensure anyone who isn't randomly tested in a two year period must be tested in order to ensure the health, safety and welfare of the public.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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Not applicable.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Kate Nosbisch, DPOR, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, tel. (804) 367-8514, fax (804) 527-4294, and [Branchpilots@dpor.virginia.gov](mailto:Branchpilots@dpor.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

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<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	See below.
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	See below.
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	See below.
<b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	See below.
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	See below.
<b>Beneficial impact the regulation is designed to produce.</b>	See below.

**Fiscal Impact of Proposed Regulation**

**Summary:**

The current regulations are being revised with some changes and enhancements. This proposed regulation updates the physical examination requirements and the initial and renewal licensing requirements, modifies the licensure denial reporting requirements, and establishes criteria for the Medical Review Officer.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

**Fiscal Impact:**

	FY 2010	FY 2011	FY2012	FY2013
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)

Program/Service Area	560 46	560 46	560 46	560 46
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Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

**Description of Costs:**

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

**Cost to Localities:** No change anticipated.

**Description of Individuals, Businesses, or Other Entities Impacted:** The revised regulations apply to Branch Pilot applicants and regulants.

**Estimated Number of Regulants:** There are approximately 48 licensed Branch Pilots and Limited Branch Pilots.

**Projected Cost to Regulants:** There is no anticipated cost to the regulants.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

Most of the proposed amendments to the regulations clarify existing language; modify definitions to meet changes regarding chemical testing requirements for initial licensing and license renewal or to address historical issues experienced by the Board since the last amendments were promulgated. For those changes that are more substantive the Board looked at methods used in other regulatory programs as well as those used by similar agencies in other states. The Board weighed those alternatives against the burden to its own regulant population, especially small businesses.

The Board will consider all comments received during the public comment period as to proposed alternatives.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum:*

*1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulations were developed with consideration that the industry consists of small businesses. The Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on small businesses.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

No comments were received from the public during the public comment period.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The contemplated changes are not anticipated to have any significant impact on Virginia's families.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

18VAC 45-20-05			Amend the definitions of chemical test and illegal drugs to include the phrase "or marijuana." The phrase is included to
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			further clarify the Schedule of controlled substances.
18VAC45-20-10.B.5			Amended the initial licensing for a branch pilot to include chemical testing in addition their physical examination.
18VAC 45-20-20.B.1			Language added regarding limited branch pilot license renewal requirements to include chemical testing if not randomly performed in previous 24 months.
18VAC45-20-20.C.2			Language added regarding full branch pilot license renewal requirements to include chemical testing if not randomly performed in previous 24 months
18VAC45-20-40.1			Language added to include convictions resulting from an arrest of any alcohol or drug-related offense.
18VAC45-20-40.2			Language change regarding timeframe for reporting offenses; language added to report alcohol or drug-related offenses.
18VAC45-20-40.3			Language change regarding timeframe for reporting any action by the National Transportation Safety Board or the United States Coast Guard.
18VAC45-20-40.9			Language change regarding timeframe for reporting physical or mental condition which may affect the ability to perform duties of a pilot.
18VAC45-20-50.C.5			Language added to require the Medical Review Officer to report any delay or refusal by the licensee in reporting to test or being tested.

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here