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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board For Branch Pilots
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC45-20
<b>VAC Chapter title(s)</b>	Board for Branch Pilots Regulations
<b>Action title</b>	General Review of Board for Branch Pilots Regulations
<b>Date this document prepared</b>	October 5, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Board for Branch Pilots (“the Board”) intends to undertake a general regulatory review of the Board for Branch Pilots Regulations. The regulation provides for the licensure of limited branch pilots and branch pilots.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation compliments current Virginia law and meets applicable federal requirements, if any;
3. Review to ensure the regulation is organized, clear, and understandable; and

4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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“DPOR” means Department of Professional and Occupational Regulation.

“MRO” means medical review officer.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor “...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth.”

This action is not the result of a mandate.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The agency is Board for Branch Pilots.

Section 54.1-201 of the Code of Virginia provides, in part:

A. The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system

administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

**Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The General Assembly has charged the Board with the responsibility for regulating those who perform the duties of a branch pilot by requiring that such individuals obtain a license in order to engage in this occupation.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to assure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

The Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. The committee’s membership consisted of two licensed branch pilots and one member who is involved in the shipping industry.

The regulatory review committee performed a review of the regulation and provided recommendations to the Board. The Board has reviewed and approved the committee’s recommendations. The Board is expected consider the substantive changes detailed below. The Board has developed preliminary draft text. However, the Board may consider other changes prior to adoption of the proposed regulation.

Initial Licensing (18 VAC 45-20-10):

- Revising the provisions of subdivision B.4 to reword language pertaining to the requirement for applicants for a full branch pilot license to possess a Federal Inland Masters credential issued by the United States Coast Guard, which must include a radar observer endorsement.

- Revising the provisions of subsection B to remove the requirement in subdivision B.5 that a limited branch pilot seeking to obtain licensure as a full branch pilot provide the Board with evidence of a satisfactory physical examination, including chemical tests, conducted within the immediately preceding 60 days.

License Renewal (18 VAC 45-20-20):

- Revising the provisions of subdivisions B.3 and C.1 to reword language pertaining to the requirements for limited branch pilots and full branch pilots to possess a Federal Inland Masters credential issued by the United States Coast Guard, which must include a radar observer endorsement, in order to renew a license.

Change of License (18 VAC 45-20-30): Adding a provision to the section that will allow branch pilots who have a full pilot branch license for the branch of Sea to Wolf Trap to qualify for an examination for a full branch pilot license for the waters of the Chesapeake Bay from Wolf Trap to Smith Point, without requiring a federal first class pilot endorsement. Under the licensure scheme adopted by the Board, branch pilot licenses are issued for specific branches of the waters of the Commonwealth. A pilot is only permitted to perform piloting for the branches designated on the license. Currently, if a licensee wishes to qualify for additional branches other than those specified on the pilot's license, the pilot must (i) pass a Board-approved practical examination, and (ii) receive a First Class Pilot endorsement from the United States Coast Guard.

Grounds for Denial of Licensure, Denial of Renewal, or Discipline (18 VAC 45-20-40):

- Revising the prohibited act in subdivision 1 to remove language that prohibits being convicted or found guilty of any felony or a misdemeanor resulting from an arrest for any alcohol or drug related offense. Licensees would still be prohibited from being convicted or found guilty of any felony or a misdemeanor involving moral turpitude or any alcohol or drug related offense. The language being removed is essentially duplicative.
- Removing the prohibited act in existing subdivision 7 which prohibits failure to report to pilot officers the pilot's finishing time and other required information relating to the particulars of the ship. This prohibited act is essentially duplicative of the prohibited act in existing subdivision 8.
- Merging the provisions of the prohibited acts in existing subdivisions 10 and 11. The revised prohibited act would provide that a chemical test is required: (i) immediately, and no later than 12 hours, after involvement in a collision, grounding, or other incident resulting in personal injury, death, environmental hazard, or property damage in excess of \$100,000; (ii) in any instance in which the Board has reasonable cause to believe there is evidence of impaired performance and a test is necessary to protect the public health, safety, or welfare; or (iii) under the provisions of 18 VAC 45-20-50. Refusal to comply with the requirements for a chemical test would be prohibited. In certain circumstances, failure to comply would result in summary suspension of a pilot's license in accordance with § 54.1-902 of the Code of Virginia.
- Merging the provisions of the prohibited acts in existing subdivisions 13 and 14. The revised subdivision would prohibit (i) evidence of impaired performance; (ii) a positive finding of substance abuse; or (iii) a chemical test result which the Board has reasonable grounds to believe there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of license in accordance with § 54.1-902 of the Code of Virginia.
- Merging the provisions of the prohibited acts in existing subdivisions 15 and 16. The revised prohibited act would prohibit (i) performing or attempting to perform any duties of the job while under the influence of illegal drugs; or (ii) performing or attempting to perform any duties while under the influence of alcohol, marijuana, or any medication to the extent the licensee is unfit for the performance of duties.

Random Chemical Testing (18 VAC 45-20-50): Revising the provisions of subsection C to provide that a licensee must ensure that the medical review officer (MRO) performs the duties outlined in this

subsection. Currently, this subsection imposes certain duties on the MRO, who is not a regulant of the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

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A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

**Periodic Review and Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

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This NOIRA is not being used to announce a periodic review or a small business impact review.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. The committee held meetings on April 3, 2023, and May 22, 2023. The Board performed a review of the committee’s recommendations at a meeting on June 12, 2023. These meetings included opportunities for public comment. No comments were received at these meetings.

The Virginia Board for Branch Pilots is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Kate Nosbisch  
Executive Director  
9960 Mayland Drive  
Perimeter Center, Suite 400  
Richmond, VA 23233  
[BranchPilots@dpor.virginia.gov](mailto:BranchPilots@dpor.virginia.gov)  
(866) 465-6206 (fax)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.