



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

<b>Agency name</b>	Department of Professional and Occupational Regulation / Board for Branch Pilots
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 45-20
<b>Regulation title</b>	Board for Branch Pilot Regulations
<b>Action title</b>	Board for Branch Pilots Temporary License Provisions
<b>Date this document prepared</b>	August 5, 2010

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.*

- 1) Please explain why this is an emergency situation as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

1. This is an emergency situation pursuant to § 2.2-4011 of the Code of Virginia. Chapters 260 and 280 of the Acts of the 2010 General Assembly, which were the result of SB 474 and HB 792 respectively, require regulations to be effective within 280 days of enactment.
2. The proposed regulation changes the existing regulation to include a provision that addresses temporary license requirements pursuant to the above-named Chapters.

## 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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary. Please include a citation to the emergency language.*

---

Section 54.1-902 states in part that the Board shall have the power and duty to promulgate regulations to carry out the requirements of Chapter 9 of Title 54.1 of the *Code of Virginia*. Section 54.1-201.1 authorizes regulatory boards within the Department of Professional and Occupational Regulation to issue temporary licenses and certificates to applicants that meet specified criteria. Enactment clause 2 of Chapters 260 and 280 of the 2010 Acts of Assembly requires that regulatory boards within the Department shall promulgate regulations to implement the provision of the act to be effective within 280 days of its enactment. Section 54.1-201(5) states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulation is mandatory to implement Chapters 260 and 280 of the Acts of the 2010 General Assembly.

## Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

---

The proposed amendment addresses temporary licensure for branch pilots as required by Chapters 260 and 280 of the Acts of the 2010 General Assembly, which were the result of SB 474 and HB 792. The amendment states that the Board for Branch Pilots will not issue temporary licenses. The goal and necessity of the amended regulation is to implement Chapters 260 and 280 of the Acts of the 2010 General Assembly, which were the result of SB 474 and HB 792. This action to amend the Board's regulations is intended to be permanent.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

---

The General Assembly determined boards within the Department of Professional and Occupational Regulation needed to develop regulations to address temporary licensure and certification.

## Substance

*Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

---

The amendment to the regulation states that temporary branch pilot licenses will not be issued by the Board.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.*

---

Chapters 260 and 280 of the Acts of the 2010 General Assembly and the Code of Virginia mandate the promulgation of regulations to address temporary licensure. The statutory addition of § 54.1-201.1 states that regulatory boards may issue temporary licenses and certificates to applicants that meet specific criteria, including the simultaneous submission of a completed application for licensure or certification, and that the temporary license will be valid for no more than 45 days.

The Board determined that the licensure process currently contained in its regulations does not include criteria that would result in delayed issuance of a license once a completed application is received. In addition, to be licensed as a Virginia branch pilot requires completion of a specific training program as which includes completion of a two year apprenticeship offered only by the Virginia Pilots Association (VPA) and also requires an examination offered by the VPA. Due to the specific geographical lay out of Virginia's coastline, the licensure requirements are very specific to Virginia. Therefore, licensure as a river, harbor or branch pilot in another state does not qualify individuals for licensure in Virginia just as a Virginia license would not qualify an individual for licensure in another state due to its specific geographical layout. The Board has determined that a temporary license is not applicable to this profession.

## Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.*

---

The agency/board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also 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 for the public comment file may do so Kate Nosbisch, Executive Director, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23223, fax to (804) 527-4294, or email to [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 day of the public comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

### Participatory approach

*Please indicate the extent to which an ad hoc advisory group or regulatory advisory panel will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

---

The Board will use the participatory approach to develop a proposal if it receives at least 15 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory panel will be sent to all applicants.

### Family impact

*Assess the potential 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.*

---

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.