



# Virginia Department of Planning and Budget **Economic Impact Analysis**

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**18 VAC 45-20 Board for Branch Pilots Regulations**  
**Department of Professional and Occupational Regulation**  
**Town Hall Action/Stage: 6001 / 9939**  
June 22, 2023

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

The Board for Branch Pilots (Board) proposes to make clear that being under the influence of marijuana while on duty is grounds for denial of initial licensure, denial of license renewal, or discipline of existing branch pilot licensees. Additionally, the Board proposes to make clear that the medical review officer shall report findings of on-duty branch pilots testing positive for marijuana that may impair the safe discharge of their duties to the licensee and president or vice president of the Board and to the Board's administrator.

## **Background**

Branch pilots are responsible for safe passage of ships in Virginia's major shipping lanes and waterways. On-duty branch pilots are subject to random chemical testing.

Among other items, the current regulation lists the following as grounds for denial of initial licensure, denial of license renewal, or discipline of existing branch pilot licensees:

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

15. Performing or attempting to perform any of the duties of his office or job while under the influence of illegal drugs;

16. Performing or attempting to perform any of the duties of his office or job while under the influence of alcohol or any medication (controlled substance or otherwise) to the extent that he was unfit for the performance of the duties of his office or job;

Chapter 550 of the 2021 Acts of Assembly (Chapter 550)<sup>2</sup> eliminated criminal penalties for simple possession of marijuana and modified several other provisions of law related to marijuana. Prior to this, marijuana would have clearly fallen under “illegal drugs” as mentioned in the grounds for denial of initial licensure, denial of license renewal, or discipline when on duty and found to be under the influence. Since enactment of Chapter 550, marijuana could potentially no longer be considered an illegal drug. Consequently, the Board proposes to add “marijuana” to “16” so that it reads:

16. Performing or attempting to perform any of the duties of his office or job while under the influence of alcohol, **marijuana**, or any medication (controlled substance or otherwise) to the extent that he was unfit for the performance of the duties of his office or job;

The regulation defines “medical review officer (MRO)” as “a Virginia licensed physician with a current valid certification from the American College of Occupational and Environmental Medicine or the American Association of Medical Review Officers whose duties, authorities and responsibilities are delineated by these organizations.” Among the responsibilities of the MRO, the current regulation states that:

Any time the MRO finds the presence of a drug or alcohol that may impair the safe discharge of any duty of a Virginia pilot such that he is unfit to perform those duties, report his written findings to the licensee and president or vice president of the board and to the board's administrator.

The Board proposes to add “or marijuana” to that sentence so that it reads:

Any time the MRO finds the presence of a drug, alcohol, **or marijuana** that may impair the safe discharge of any duty of a Virginia pilot such that he is unfit to perform those duties, report his written findings to the licensee and president or vice president of the board and to the board's administrator.

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<sup>2</sup> See <https://lis.virginia.gov/000/chapter550.pdf>.

## Estimated Benefits and Costs

According to the Department of Professional and Occupational Regulation, random chemical testing has continued to include marijuana. The proposed amendments would not change what occurs in practice.

Nevertheless, it is beneficial to clarify the authority to test for marijuana and the consequences for being under the influence of marijuana while on duty. Like alcohol, marijuana slows reaction time and ability to make decisions, impairs coordination, and distorts perception.<sup>3</sup> An on-duty branch pilot who is impaired by any substance poses a risk to not only the commercial cargo ship the pilot is piloting, but to also the crew, any citizens using the waterways, other watercraft, properties adjacent to and in the waterways, and the port.

## Businesses and Other Entities Affected

The proposed amendments pertain to the 38 licensed branch pilots in the Commonwealth, all of whom work for small businesses.<sup>4</sup>

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed amendments do not increase net cost or reduce in net revenue. Thus, no adverse impact is indicated.

## Small Businesses<sup>6</sup> Affected:<sup>7</sup>

The proposed amendments represent consistency with current practice and do not adversely affect small business.

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<sup>3</sup> Source: U.S. Centers for Disease Control and Prevention <https://www.cdc.gov/marijuana/health-effects/driving.html>.

<sup>4</sup> Data source: Department of Professional and Occupational Regulation.

<sup>5</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>6</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

<sup>7</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject

**Localities<sup>8</sup> Affected<sup>9</sup>**

Branch pilots work within localities along navigable waterways, particularly the James and Potomac Rivers.<sup>10</sup> The proposed amendments do not introduce costs for local governments.

**Projected Impact on Employment**

The proposed amendments do not appear to affect total employment.

**Effects on the Use and Value of Private Property**

The proposed amendments do not affect the use and value of private property or real estate development costs.

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to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>8</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>9</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

<sup>10</sup> Source: Department of Professional and Occupational Regulation.