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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Board for Branch Pilots |
| Virginia Administrative Code (VAC) Chapter citation(s) | 18VAC 45-40 18VAC45-50 |
| VAC Chapter title(s) | Regulations Governing Branch Pilots |
| Action title | Amend Reporting requirements |
| Date this document prepared | July 19, 2022; amended July 22, 2022 |
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This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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).

This change is to clarify the board has the authority to deny and initial or renewal license if the applicant performs or attempts to perform any of his duties while under the influence of marijuana in addition to alcohol or any medication controlled substance or otherwise).

It is to also clarify that the Medical Review Officer (MRO) shall report when any presence of a marijuana is found in specifically in addition to the presence of drug or alcohol that may impair the safe discharge for the branch pilot's duties.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

MRO is the 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 Executive Order 14 (as amended, July 16, 2018), "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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As marijuana was no longer a reportable offense as of July 1, 2021, the Board felt strongly that it must be understood that it would still be reportable in random drug tests and actionable if a pilot were to test positive for marijuana in his system during anytime.

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.

The agency is the Board for Branch Pilots. The provision of 54.1-201 and 54.1-202, and Chapter 9 of Title 54.1 of the *Code of Virginia* enumerates the legal authority for the Board to promulgate regulations.

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.

A branch pilot impaired by any substance is a threat to not only the commercial cargo ship he is piloting, but also the crew, any citizens using the waterways, and the port.

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 only change is adding the word "marijuana" to the two regulations specified.

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.

There is not a viable alternative. The Board felt it important to specifically include marijuana because although it is not a reportable offense since July 1, 2021 in Virginia, branch pilots under the influence of marijuana could be impaired and cause a maritime disaster when piloting commercial cargo vessels arriving at Virginia ports.

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 Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify 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."

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.

The 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:

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Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400, Richmond, VA 23233
Email: kate.nosbisch@dpor.virginia.gov / Fax: 866.465.6206

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 not be held following the publication of the proposed stage of this regulatory action.

