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Proposed Regulation Agency Background Document

Agency name	Board for Branch Pilots
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC45-20
VAC Chapter title(s)	Board for Branch Pilots Regulations
Action title	General Review of Board for Branch Pilots Regulations
Date this document prepared	August 13, 2024 (revised September 26, 2024)

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board for Branch Pilots (“the Board”) proposes to amend the Board for Branch Pilots Regulations to (i) update and clarify provisions of the regulation, to include ensuring that the regulation reflects current agency procedures and practices; (ii) ensure the regulation compliments current Virginia law and is clearly written and understandable; (iii) remove requirements in the regulation that are not necessary to protect the public welfare; and (iv) reduce regulatory burdens while still protecting the public health, safety, and welfare.

This action proposes changes to (i) the requirements for initial licensure as a full branch pilot; (ii) provisions for renewal of branch pilot licenses; (iii) provisions for extending branch pilot licenses; (iv) the prohibited acts; and (v) provisions for random chemical testing.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“ARPA” means Automated Radar Plotting Aids.

“DPOR” means Department of Professional and Occupational Regulation.

“MRO” means medical review officer.

“USCG” means United States Coast Guard.

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.”

This regulatory change is not the result of a mandate.

The initial impetus for this 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.”

During review of the regulation, the Board identified certain requirements as overly burdensome to regulants and unnecessary for the protection of the health, safety, and welfare of the public. The Board seeks to make amendments to remove these requirements while retaining requirements that ensure minimum competency and continue to provide protection to the public.

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 promulgating agency is the Board for Branch Pilots.

Section 54.1-902 of the Code of Virginia states, in part:

- A. The Board is authorized to promulgate regulations necessary for the proper government and regulation of pilots and to prescribe penalties for the violation of regulations in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

In addition, § 54.1-201 of the Code of Virginia states, 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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

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. Branch pilots are responsible for safe passage of ships in Virginia’s major shipping lanes and waterways.

The performing of branch pilot duties by those who lack sufficient expertise, competence, and integrity poses a risk to the public health, safety, and welfare. Risks include maritime incidents, to include collisions and groundings, which can have significant economic consequences. These include, in the case of ship groundings, the costs of restoration of aquatic habitat, dredging a ship out of a waterway, costs to tug the grounded vessel, labor hours and resources of federal, state, and local agencies to refloat a vessel; and, in the case of collisions, damage to bridges, ports, or equipment. In addition, there also potential costs borne by shipping companies and the customers whose cargo, if any, are carried due to incidents. These include damage to vessels, lost cargo, and delayed loading or unloading of cargo. Moreover, incidents may result in personal injury to individuals, or potential loss of life.

As mandated by the General Assembly, the Board protects the public health, safety, and welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession.

In accordance with the provisions of Executive Directive Number One (2022), the Board conducted a general review of their regulations in order to identify areas where regulatory requirements could be removed or reduced.

The goals of this regulatory action are to ensure the regulations complement Virginia law, reflect current agency procedures, provide clarification to provisions of the regulations, and reduce regulatory burdens by removing requirements that are not necessary to protect the health, safety, and welfare of the public.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

1. Revising the provisions of section -10 to remove an unnecessary requirement for applicants for a full branch pilot license to provide evidence of a satisfactory physical examination including required chemical tests.
2. Revising provisions in sections -10 and -20 related to USCG licensure for initial full branch pilot licensure and renewal of limited branch pilot and full branch pilot licenses to update and reword these provisions.
3. Adding a provision to section -30 that will allow branch pilots who have a full pilot branch license for the branch of Sea to Wolf Trap to qualify for an extension of route for the waters of the Chesapeake Bay from Wolf Trap to Smith Point, without requiring a federal first class pilot endorsement.
4. Significantly revising the prohibited acts in section -40 revised to streamline the prohibited acts. This includes eliminating duplicative prohibited acts and consolidating prohibited acts related to failure to comply with chemical testing requirements and performing piloting duties while impaired or under the influence of drugs or alcohol.
5. Revising the provisions of section -50 to provide that a licensee must ensure that the medical review officer (MRO) performs the duties and responsibilities assigned by the regulation.

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantages to the public and regulated community include providing clarification to provisions of the regulations, ensuring the regulations complement Virginia law and reflect current agency procedures, and reducing regulatory burdens by removing requirements that are not necessary to protect the health, safety, and welfare of the public.

There are no identifiable disadvantages to the public or the Commonwealth. It is not anticipated that the regulatory change will create any substantial disadvantages to the regulated community.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or

regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected by the regulatory change.

Localities Particularly Affected

No other localities are particularly affected by the regulatory change.

Other Entities Particularly Affected

No other entities are particularly affected by the regulatory change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Summary:

The Virginia Board for Branch Pilots licenses the pilots responsible for safe passage of ships in Virginia's major shipping lanes and waterways. Per Executive Order 19, the Board for Branch Pilots conducted a general regulatory review of the Board for Branch Pilots Regulations. The regulation provides for the licensure of branch pilots.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>There are no savings and no changes to costs, fees, or revenues of DPOR resulting from this regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>A benefit of this regulatory change is better regulation clarity.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.
Benefits the regulatory change is designed to produce.	None.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	No entities should be affected by this change. It is just to better clarify regulations.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	As of July 1, 2024, there are 39 branch pilots.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	No projected cost for this regulatory change for individuals, businesses, or other entities.
Benefits the regulatory change is designed to produce.	The benefit will be to better clarify regulations.

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.

Branch pilot licenses are issued to individuals. Licensed branch pilots are self-employed. To the extent licensed branch pilots are independent contractors, and considered to be business entities, these entities may fall within the meaning of “small business” as defined in § 2.2-4007.1 of the Code of Virginia. No less intrusive or less costly alternatives to achieve the purpose of the regulatory change were identified.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

Branch pilot licenses are issued to individuals. Licensed branch pilots are self-employed. To the extent licensed branch pilots are independent contractors, and considered to be business entities, these entities may fall within the meaning of "small business" as defined in § 2.2-4007.1 of the Code of Virginia.

As mandated by the General Assembly, the Board protects the public health, safety, and welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession and minimum standards to assure continued competency.

These proposed amendments do not pose an unreasonable administrative or financial burden. The enabling statutes establishing the licensing program covered by this regulation provides no exemption for small businesses; therefore, there are no such exemptions contained in the proposed change.

Review of this regulation was initiated based on Executive Directive Number One (2022). Amendments to the regulation proposed under this action are intended to reduce regulatory burdens imposed upon licensees. There are no other alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the goals of this regulatory action.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This action is not being used to conduct a periodic review or small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No comments were received following publication of the NOIRA stage.

Commenter	Comment	Agency response
N/A	N/A	N/A

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.

The Board 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, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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
 (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 this 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.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or

agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
20-10	N/A	<p>This section provides for the requirements for initial licensure of limited branch pilots and full branch pilots.</p> <p>An individual seeking a limited branch pilot license must meet the qualifications:</p> <ul style="list-style-type: none"> • Satisfactorily complete at two-year apprenticeship program approved by the Board; • Satisfactorily complete a Board-approved comprehensive examination; <ul style="list-style-type: none"> ○ The examination is a two-part examination (written and practical oral examination) administered by an examining committee of the Board; • Provide evidence of a satisfactory physical examination conducted within the immediately preceding 60 days, to include chemical tests required by the regulation; • Notify the Board of any chronic or acute physical or mental condition; • Pay a licensing fee; and • Comply with the Board’s regulations and applicable statute. 	<p>The section is revised to remove the requirement for applicants for a full branch pilot license to provide evidence of a satisfactory physical examination, to include chemical tests required by the regulation. This requirement is unnecessary because limited branch pilots must take annual physicals to renew a license and are subject to random testing for chemicals.</p> <p>The provisions regarding USCG licensure for applicants for a full branch pilot license are reworded and updated. As revised, an applicant must possess a valid unlimited Federal Inland Masters credential with First Class Pilot endorsement, which must include a radar observe endorsement for waters of the Commonwealth. A copy of the credential must be submitted to the Board.</p>

		<p>A limited branch pilot may qualify for a full branch pilot license by meeting the following qualifications:</p> <ul style="list-style-type: none"> • Satisfactorily complete a five-year apprenticeship program approved by the Board; • Hold a limited branch pilot license in good standing; • Possess a valid unlimited Federal Inland Masters License with First Class Pilot endorsement issued by the USCG for the same waters as the applicant’s limited branch, and file a copy of the license with the Board; <ul style="list-style-type: none"> ○ The license must include an ARPA radar certificate. • Pass a Board-approved practical examination; <ul style="list-style-type: none"> ○ The examination is administered by an examining committee of the Board; • Provide evidence of a satisfactory physical examination conducted within the immediately preceding 60 days, to include chemical tests required by the regulation; • Pay a licensing fee; and • Qualify in accordance with § 54.1-905 of the Code of Virginia. <ul style="list-style-type: none"> ○ The statute provides that applicants for examination must provide the Board with a certificate from the circuit court in the county or city of their residence stating the applicant is of good character and a resident of Virginia; 	
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		<ul style="list-style-type: none"> ○ The statute provides that an applicant must be licensed as a branch pilot for at least three years; ○ The statute requires an individual approved for a branch pilot license must provide a bond to the circuit court. The bond must be in the penalty of \$500 and conditioned on the faithful performance of duties; and ○ The statute requires an individual approved for a branch pilot license to take an oath of office. <p>The section further provides that checks or money orders for licensing fees must be made payable to the Treasurer of Virginia, and that all fees are nonrefundable.</p>	
20-20	N/A	<p>This section provides for renewal of pilot licenses.</p> <p>A pilot seeking renewal of a license must complete a renewal application and appear before the Board or a committee of the Board which will determine if the pilot possesses the qualifications for license renewal.</p> <p>A limited branch pilot must meet the following renewal requirements:</p> <ul style="list-style-type: none"> • Provide evidence of a satisfactory physical examination conducted within the immediately preceding 60 days, to include chemical tests required by the regulation if the individual has not been subject to random 	<p>The provisions regarding USCG licensure for renewal applicants are reworded and updated. As revised, an renewal applicant must possess a valid unlimited Federal Inland Masters credential with First Class Pilot endorsement, which must include a radar observe endorsement for waters of the Commonwealth.</p>

		<p>chemical testing during the previous 24 months;</p> <ul style="list-style-type: none"> • Provide evidence that the individual has transited the waters covered by the individual's license during the preceding 12 months; • After three years of licensure, possess a valid unlimited Federal Inland Masters License with First Class Pilot endorsement issued by the USCG for the same waters as the applicant's limited branch, with an ARPA radar certificate; and • Pay a licensing fee. <p>A full branch pilot must meet the following renewal requirements:</p> <ul style="list-style-type: none"> • Possess a valid unlimited Federal Inland Masters License with First Class Pilot endorsement issued by the USCG for the same waters as the applicant's branch, with an ARPA radar certificate; • Provide evidence of a satisfactory physical examination conducted within the immediately preceding 60 days, to include chemical tests required by the regulation if the individual has not been subject to random chemical testing during the previous 24 months; • Provide evidence that the individual has transited the waters covered by the individual's license during the preceding 12 months and has pilot 12 	
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		<p>or more ships during that time;</p> <ul style="list-style-type: none"> ○ Of the required pilot trips, six must have occurred during the first six months of the calendar year and six must have occurred during the last six months of the calendar year. ○ The experience requirements for renewal may be waived by the Board upon showing of good cause if the Board determines the pilot is otherwise qualified. ● Pay a licensing fee; and ● Qualify in accordance with § 54.1-906 of the Code of Virginia. <ul style="list-style-type: none"> ○ The statute provides that a pilot must appear before the Board every 12 months, and if the Board deems the pilot qualified, the Board must renew the license. ○ The statute requires that the bond previously given by the pilot remain in force. ○ The statute requires the pilot appear before the circuit court clerk and renew the oath of office. <p>The section further provides that checks or money orders for licensing fees must be made payable to the Treasurer of Virginia, and that all fees are nonrefundable.</p>	
20-30	N/A	This section provides for licensees to modify a license by adding a branch.	The section is revised to add a provision that will allow branch pilots who have a full pilot branch license for the branch of Sea to Wolf Trap to qualify for an extension of route for the waters of the

		<p>In order to extend a license, an applicant must:</p> <ul style="list-style-type: none"> • Satisfactorily complete 12 or more round trips with a pilot currently licensed for the branch for which the individual seeks licensure; • Receive a First Class Pilot License issued by USCG for that additional area; and • Pass a Board-approved practical examination administered by a committee of the Board. 	<p>Chesapeake Bay from Wolf Trap to Smith Point, without requiring a federal first class pilot endorsement. Currently, an applicant must first acquire the Federal First Class Pilot endorsement and then pass the branch pilot exam.</p>
<p>20-40</p>	<p>N/A</p>	<p>This section provides for the Board’s authority to impose regulatory discipline and for prohibited acts.</p> <p>The section provides that the Board has the authority to (i) deny initial licensure; (ii) deny an extension of a license; (iii) deny renewal of license; or (iv) discipline a licensee.</p> <p>The section outlines several prohibited acts. These include:</p> <ul style="list-style-type: none"> • Negligence or misconduct in the performance of duties; • Refusing or failing to carry out an order from the pilot officers for reasons other than the public’s health, safety, and welfare; • Failing to report to the pilot officers the pilot’s finishing time and other required information relating to the particulars of the ship; • Refusing to comply with the Board’s requirement for a chemical test; <ul style="list-style-type: none"> ○ A test is required immediately and no later than 12 hours after involvement in a 	<p>The prohibited acts in the section are significantly revised to streamline the prohibited acts.</p> <p>The prohibited acts in subdivision #1 are revised to remove the provision 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.</p> <p>The prohibited act in 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.</p> <p>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</p>

		<p>collision, grounding, or other incident resulting in personal injury, death, environmental hazard, or property damage in excess of \$100,000.</p> <ul style="list-style-type: none"> ○ Refusal to comply with the requirement may result in summary suspension of the pilot's license as authorized by statute. ● Refusing to comply with any Board requirement for chemical tests in any instance in which the Board has cause to believe a test is necessary to protect the public health, safety, and welfare; <ul style="list-style-type: none"> ○ Refusal to comply with the requirement may result in summary suspension of the pilot's license as authorized by statute. ● A positive finding as a result of, or on, any substance abuse or chemical test as a result of which the Board believes there is a threat to the public health, safety, and welfare; <ul style="list-style-type: none"> ○ Such a result may result in summary suspension of the pilot's license as authorized by statute. ● Evidence of impaired performance in any instance in which the Board believes there is a threat to the public health, safety, and welfare; <ul style="list-style-type: none"> ○ Such a finding may result in summary suspension of the pilot's license as authorized by statute 	<p>welfare; or (iii) under the provisions of section -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.</p> <p>Merging the provisions of the prohibited acts in existing subdivisions #13 and #14. The revised subdivision would provide that reasonable cause by the Board to believe there is a threat to public health, safety, or welfare based on (i) evidence of impaired performance or substance abuse; or (ii) a positive chemical test is a basis for disciplinary action. Such a finding may result in summary suspension of license in accordance with § 54.1-902 of the Code of Virginia.</p> <p>Merging the provisions of the prohibited acts in existing subdivisions #15 and #16. The revised prohibited act would prohibit performing or attempting to perform any duties of the job (i) while under the influence of illegal drugs; or (ii) While under the influence of alcohol, marijuana, or any medication (controlled substance or otherwise) to the extent the licensee is unfit for the performance of duties.</p> <p>These changes are intended to make the regulation clearer and more understandable.</p> <p>Minor stylistic changes are made.</p>
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		<ul style="list-style-type: none">• A pilot performing or attempting to perform any of the duties of the pilot's office or job while under the influence of illegal drugs;• A pilot performing or attempting to perform any of the duties of office or job while under the influence of alcohol or any medication (controlled substance or otherwise) to the extent the pilot was unfit for the performance of duties of office or job;• Having been convicted or found guilty in any jurisdiction of the United States of any felony or any misdemeanor involving moral turpitude or any alcohol or drug related offense, there being no appeal pending and time for appeal having elapsed; and• Having been convicted or found guilty in any jurisdiction of the United States of any felony or misdemeanor resulting from an arrest for any alcohol or drug related offense, there being not appeal pending and time for appeal having elapsed. <p>The criminal conviction prohibited acts in this section also provide that any plea of <i>nolo contendere</i> will be considered a conviction. The record of a conviction certified or authenticated in such a form as to be admissible in evidence of the laws or jurisdiction where convicted is admissible as prima facie evidence of such conviction.</p>	
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<p>20-50</p>	<p>N/A</p>	<p>This section provides for the random chemical testing of licensees.</p> <p>Licensees are subject to random chemical testing. Such testing must be conducted at an annual testing rate of 30% and not more than 100% of licensees. Licensees are responsible for all costs of such testing. Testing must be a comprehensive drug screen acceptable to the Board and include testing for substances specified Schedules I through V of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). A licensee selected for testing must report for testing within two hours of notification. A licensee's failure to take a test is considered refusal to take the test.</p> <p>The section outlines a licensee's duties with respect to random testing. These include the requirement to participate in random testing and the requirement to report for random testing when selected.</p> <p>The section also imposes duties on a licensee related to prescriptions from a health care provider, including obtaining a statement from a health care provider regarding the licensee's fitness to safely perform piloting duties when prescribed new medication, and notification to the MRO regarding prescribed medications.</p> <p>The section outlines the duties of the MRO, which include a requirement to receive, evaluate, and maintain record of each random chemical test taken</p>	<p>The provisions of subsection C are revised 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.</p> <p>The section is also revised to specify that when an MRO finds the presence of marijuana that may impair the safe discharge of any duty of a pilot such the pilot is unfit to perform duties, the MRO must report this finding to the licensee and the Board. This change is also currently part of another pending action (Action 6001 / Stage 10410).</p> <p>The requirement for a licensee to notify the MRO regarding prescription medications that will be used within 12 hours of being on duty is revised to provide that the licensee may email such prescription to the MRO. This change is intended to update the regulation and provide flexibility to regulants.</p>
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		by a licensee, and to report to the licensee and the Board when the MRO finds the presence of a drug or alcohol that may impair the safe discharge of any duty of a pilot such that the pilot is unfit to perform those duties.	
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