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## Final Regulation 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>	Amend Reporting Requirements
<b>Date this document prepared</b>	July 9, 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 Regulations provide for the licensure and regulation of branch pilots and branch pilots in accordance with the requirements of Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 of the Code of Virginia. Branch Pilots are responsible for safe passage of ships in Virginia's major shipping lanes and waterways.

Mandatory drug tests are performed for initial licensure, renewal of license, extension of route, and any incident involving a vessel.

This action amends sections of the Board for Branch Pilots Regulations that (i) establish the grounds for denial of licensure, license renewal, or discipline of a licensee; and (ii) provide for random chemical testing of regulants. Section 18VAC45-20-40 is amended to provide that a regulant's performing or attempting to perform the duties of the regulant's office or job while under the influence of marijuana is grounds for denial of a license, denial of renewal of a license, or discipline of a licensee. Section 18VAC45-20-50 is amended to require that an MRO report to the licensee and to the Board for Branch

Pilots any time the MRO finds the presence of marijuana that may impair the pilot from safely discharging any duty to the extent the pilot is unfit to perform those duties.

### 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.*

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“MRO” means Medical Review Officer.

“RRC” means regulatory review committee.

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On March 14, 2024, the Board for Branch Pilots adopted the final amendment to the Board for Branch Pilots Regulations.

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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Chapter 550 of the 2021 Acts of Assembly (SB 1406) eliminated criminal penalties for simple possession of marijuana and modified several other provisions of law related to marijuana. The legislation limited dissemination of criminal history record information and clarified that convictions for certain misdemeanor marijuana offenses are not to be disclosed to the agency. As a marijuana conviction was no longer a reportable offense as of July 1, 2021, the Board for Branch Pilots (“the Board”) decided on September 13, 2021, to form a regulatory review committee (RRC) to review the regulations related to the reporting of positive test results from random drug testing. The Board determined that marijuana would still be reportable in random drug tests and actionable if a pilot were to test positive for marijuana.

The RRC recommended the Board amend its regulations to include the word “marijuana” in 18VAC45-20-40.16 and 18VAC45-20-50.C.4. On March 15, 2023, the Board adopted the recommendation of the RRC.

### 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 promulgating agency is the Board for Branch Pilots. Chapter 9 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program 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.). Regulations may include the right to suspend or revoke the branch of any pilot.

**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 perform these duties, and that such individuals adhere to minimum standards of conduct. These standards of conduct include a pilot being fit to safely discharge their piloting duties. To the extent a pilot is unfit to perform piloting, the health, safety, and welfare of the public would be at risk.

The Board determined it was imperative to ensure that marijuana was included in the testing for an incident, extension of route, initial or renewal of a license, or random test screens. A 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, and the port.

The Board seeks to ensure that pilots are aware that a test positive for marijuana, could result in disciplinary action by the Board to the extent it may impair the safe discharge of the pilot’s duty to pilot a vessel.

The goal of the regulatory change is to clarify that marijuana is reportable in random drug tests and the Board has a basis to take action if a pilot were to test positive for marijuana, to include denial of a license, denial of renewal of a license, or disciplinary action.

**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.*

Section 18VAC45-20-40 is amended to provide that a regulant’s performing or attempting to perform the duties of the regulant’s office or job while under the influence of marijuana is grounds for denial of a license, denial of renewal of a license, or discipline of a licensee.

Section 18VAC45-20-50 is amended to require that an MRO report to the licensee and to the Board for Branch Pilots any time the MRO finds the presence of marijuana that may impair the pilot from safely discharging any duty to the extent the pilot is unfit to perform those duties.

**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 of the regulatory change are: 1) clarification to regulants and to the public that marijuana is reportable in random drug tests; and 2) the Board has a basis to take action if a pilot were to test positive for marijuana, to include denial of a license, denial of renewal of a license, or disciplinary action.

There are no disadvantages to the public or the Commonwealth.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

No changes to previously reported information.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

No changes to previously reported information.

**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 previous stage.

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

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

No changes have been made to the text since the previous stage.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
N/A	N/A	N/A	N/A	N/A

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
20-40	N/A	<p>This section provides for the Board’s authority to deny initial licensure, deny extension of a license, deny renewal of a license, or discipline a licensee.</p> <p>The section outlines the prohibited conduct that may be the basis for the Board to take action against a regulant. Prohibited conduct includes the performing or attempting to perform piloting duties while under the influence of alcohol or any medication (including a controlled substance) to the extent the licensee was unfit to perform duties.</p>	<p>*Subdivision #16 of the section is revised to include marijuana as a substance for which the Board may take action if a regulant performs or attempts to perform piloting duties while under the influence.</p> <p>Adding “marijuana” clarifies to regulants and the public that a pilot could be denied a license, renewal or extension of route, and he will be disciplined if the pilot tests positive for marijuana. The Board wanted to make it clear that although Virginia eliminated the criminal penalties for marijuana, it can still impair a pilot and the pilot could be disciplined for testing positive.</p>

			<p>Stylistic changes are made to the section, including removing references to gender.</p>
<p>20-50</p>	<p>N/A</p>	<p>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 by a licensee, and to report to the licensee and the Board when the MRO finds the presence of a drug</p>	<p>*Subdivision C 4 of the section is revised to include marijuana as a substance for which the MRO must notify the licensee and the Board when the MRO finds the presence of marijuana that may impair the safe discharge of any duty of a pilot that the pilot is unfit to perform those duties.</p> <p>Stylistic changes are made to the section, including removing references to gender.</p>

		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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