



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	45
VAC Chapter Number:	20
Regulation Title:	Board for Branch Pilots Regulations
Action Title:	Amending
Date:	December 30, 1999

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Due to recent disciplinary files that were brought before the Board, the Board for Branch Pilots has determined that their regulations governing the performance of a branch pilot's duties while chemically and/or physically impaired may need to be clarified.

The purpose of the proposal is to make the following changes:

? Clarify the Board's regulations relating to chemical and physical impairments and testing thereof.

? Other changes which may be necessary pursuant to the Board's periodic review of its regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

§ 54.1-902.A of the Code of Virginia authorizes the Board for Branch Pilots to promulgate regulations for a regulatory system to regulate individuals in Virginia that practice as branch pilots. While the Board is mandated to establish regulations, the content of the regulations is up to the discretion of the Board.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

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? Other changes which may be necessary pursuant to the Board's periodic review of its regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

A summary of each of the changes follows:

VAC # & SUMMARY

18 VAC 45-20-05 Add a new section which contains definitions.

18 VAC 45-20-10.A.4 and A.5 New pilots are required to notify the Board of any chronic or acute physical or mental impairment that may prevent them from safely performing their duties. Clarify the Board's requirements for chemical testing to reflect the new language.

18 VAC 45-20-10.B.5, 18 VAC 45-20-20.B.1, and 18 VAC 45-20-20.C.1 Delete the Board's requirement for drug testing during renewal and when a limited pilot becomes an unlimited pilot. These are no longer necessary with the random testing program.

18 VAC 45-20-40.9, 10, 11, 12, 13, 14, 15 & 16 These sections are being clarified and/or added to properly implement the Board's chemical testing program.

18 VAC 45-20-50 New section added detailing the requirements of the Board's random chemical testing program.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

The regulations are essential to comply with state mandates and to adopt the least burdensome alternatives allowed.

In order to protect the public, the Board desires to clarify in its regulations as to when a pilot is considered impaired so that the pilots are clear when not to pilot a ship and to ensure that its regulations in this area are current with the realities of today's world. Most chemical testing programs include random testing. Currently the Board's regulations do not include provisions for random testing. In addition, the Board's regulations do not clearly address impairment by over the counter medications, prescribed medications, or combinations thereof.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The Board's regulations apply to 41 (38 unlimited and 3 limited) individuals who are licensed as branch pilots. There are no other localities, businesses, or other entities particularly affected by the proposed revisions. The proposed revisions are not expected to affect employment in the regulated profession, nor are they expected to impact the use and value or private property. The changes are expected to increase the costs of the regulated program to the regulated individuals to comply with the revisions, as the regulants are responsible for the payment of the services of the Medical Review Officer. As the proposed regulations require some additional work to be performed by the Medical Review Officer, the cost of this additional review will be passed onto the licensed pilots who are utilizing these services. It is estimated that this total additional cost will be \$4000 annually for all 41 licensees (or, on average, \$97.56 per pilot per year). As their average annual income is well over \$100,000, this increase should have a nominal effect.

However, the cost of a single incident resulting from an impaired pilot can range from thousands of dollars for a minor incident to millions of dollars for a larger incident. In addition, any incident involving the pilotage of a ship certainly has the potential, and high probability, of having a substantial negative impact on Virginia's environment. Further, any such accident involving an impaired pilot would also limit the conduct of commerce on that particular body of water causing increased cost to business, the Commonwealth, and ultimately the citizens of the Commonwealth.

The only other costs associated with revising the existing regulations is the cost of printing and mailing the revised regulations to all existing regulants; estimated to be approximately \$74.00 (printing costs = $150 \times \$0.33 = \49.50 ; mailing costs = $45 \times \$0.55 = \24.75).

Branch Pilots

Summary of Financial Position

1994-96 through 2000-02

	1994-96	1996-98	1998-00	2000-02
Financial Position:	Actual	Actual	Projected	Projected
Beginning Cash/Revenue Balance				
	-7,340	-12,996	-56,187	-
54,594				
Revenues	20,495	27,200	25,545	31,650
Expenditures				
Bd Expend	21,089	54,160	7,184	7,400
Bd Admin	N/A	N/A	195	201
Admin of Exams	0	0	0	0
Enforcement	3,693	15,145	0	0
Legal Services	N/A	N/A	15,990	16,470
Information Systems	599	383	124	128
Facil & Suprt Srv	353	376	339	349
Agency Admin	368	281	119	123
Other/Transfers	49	46	1	1
Total Expenditures	26,151	70,391	23,952	24,671
Ending Cash/Rev Balance	-12,996		-56,187	-54,594
	-47,615			
Callahan %age	-49.7%	-79.8%	-227.9%	-193.0%

Current Fees:

Renewal - Branch Pilot	375
Renewal - Branch Pilot Limited	375

Application - Branch Pilot	275
Application - Branch Pilot Limited	275
Duplicate Wall Certificate	25
Certificate of Licensure	25
Bad Check Penalty	25

NOTES:

New fees became effective in March 1999.

Until the 1998-00 biennium, board expenditures, board administration, and legal services costs were all reported in the Board Expenditures line item.

Enforcement costs in 1996-98 are high due to an unusual level of investigative activity.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

A summary of each of the changes follows:

VAC # & SUMMARY

18 VAC 45-20-05 Add a new section which contains definitions.

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Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Failure to adopt these changes will permit the Board's regulations to remain potentially vague in this very important area of public protection. In addition, licensed branch pilots are required hold a Federal Inland Masters license with First Class Pilot Endorsement issued by the USCG. Federal regulations governing these licenses require the licensees employer to have a drug testing program; however, the Board is not permitted access to the information from the employer's program.

The Board will certainly consider any and all comments received during the proposed regulation comment period as to any proposed alternatives. In addition, anyone may petition the Board to consider a proposed regulatory change at any time in accordance with the Board's Public Participation Guidelines.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Based on the fact that no comments have been received regarding this issue, and based on the Board's review, the regulation is clearly written and easily understandable by the affected individuals.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulations will be reviewed during the Board's normal course of regulatory review which in no case shall exceed three years from the effective date of these regulations. Fees are evaluated at the end of every biennium and if fee adjustments are necessary, then the regulatory review process is initiated which could include this review. Otherwise, within 24 to 36 months of the effective date of these regulations, this matter will be placed on the Board's agenda for consideration.

The Board's regulations will be evaluated based on comments received in writing and at public hearings scheduled to receive comments on the Board's regulations. Any other items noted by the Board that need to be addressed during the course of the Board conducting its business will be noted and retained on file by staff for consideration by the Board during regulatory review.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

The contemplated changes are expected to have no impact on families.