



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

18 VAC 45-20 Board for Branch Pilots Regulations
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 6338 / 10457
September 28, 2024

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.¹

Summary of the Proposed Amendments to Regulation

The Board for Branch Pilots (Board) proposes to 1) eliminate the requirement that applicants for a full branch pilot license provide evidence of a satisfactory physical examination, to include chemical tests, 2) add a provision that would allow branch pilots who have a full branch pilot 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 for the extended route, and 3) specify that the licensee shall ensure that the medical review officer (MRO) performs his or her various duties.

Background

Branch pilots are responsible for the safe passage of ships in Virginia's major shipping lanes and waterways, which are referred to as “branches.” According to the Department of Professional and Occupational Regulation (DPOR), the performance of duties by branch pilots who lack sufficient expertise, competence, and integrity poses a risk to public health, safety, and

¹ 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.

welfare. Risks include maritime incidents, including 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 are also potential costs borne by shipping companies and the customers whose cargo, if any, are delayed 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.

Physical Examinations and Chemical Tests

Under both the current and proposed regulations, in order to renew a limited branch pilot license or a full branch pilot license, among other requirements the licensee must provide evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. If the branch pilot has not been subject to random chemical testing² during the preceding 24 months, then this examination shall include the chemical test.

In the current regulation, an individual with a limited license who is applying for full license must also provide evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. The examination must include the chemical test whether or not the branch pilot has not been subject to random chemical testing during the preceding 24 months. The Board proposes to eliminate the examination requirement when limited branch pilots apply for full licensure. The Board does not believe this would put the public at risk since the applicant has already been subject to annual physicals to renew their limited license and random testing for chemicals.

Chesapeake Bay from Wolf Trap to Smith Point

Branch pilot licenses are for specific waters. In order to extend a license to cover an additional branch, the licensee must satisfactorily complete 12 or more round trips with a currently licensed pilot of the branch for which the applicant seeks licensure, receive a First Class Pilot License endorsement issued by the United States Coast Guard for that additional area

² The chemical test is a comprehensive drug screen that includes testing for controlled substances in Schedules I - V of Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

and pass a practical examination approved by the Board and administered by the Board's Examination Committee.

The Board proposes to introduce an exception. Specifically,

Branch pilots who have a full branch license from Sea to Wolf Trap qualify to sit for a practical examination approved by the board and administered by the board's examination committee for the waters of Chesapeake Bay from Wolf Trap to Smith Point. Upon successful completion of the examination, the branch pilot obtains a full branch license from Wolf Trap to Smith Point and no Federal First Class Pilot endorsement is required.

Thus, in this circumstance, 12 or more round trips with a currently licensed pilot of the branch and Federal First Class Pilot endorsement for this route would not be required. By eliminating the trips with current licensee for the branch requirement and also not requiring a Federal First Class Pilot endorsement for the route, DPOR believes some pilots may seek to extend their licensure to the Wolf Trap to Smith Point branch.

Medical Review Officer

The current regulation states that "The medical review officer shall:" and then lists several duties, including that the MRO:

1. Be completely familiar with all duties of a Virginia pilot.
2. Receive, evaluate and maintain records of all medications given to him by or on behalf of each Virginia pilot.
3. Receive, evaluate and maintain a record of each random chemical test taken by a Virginia pilot.
4. Any time the MRO finds the presence of a drug, marijuana, 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.
5. Report in writing to the licensee, president or vice-president of the board, and the board's administrator of any delay or refusal by a licensee in reporting to testing or being tested.
6. To the extent consistent with state and federal law, protect the confidentiality of all licensee records.
7. Judge fitness to safely perform duties in the context of the licensee's prescription medications and the licensee's available medical history.

The Virginia Pilot Association, which consists of all licensed branch pilots,³ hires the MRO.⁴ Since the Board does not have direct regulatory authority over the MRO, it proposes to amend “The medical review officer shall:” to “The licensee shall ensure the medical review officer shall:.”

Estimated Benefits and Costs

The proposal to eliminate the physical examination and chemical test requirements when limited branch pilots apply for full licensure would eliminate one physical examination and chemical test for such full licensure if they had not happened to already have such an examination and test within 60 days of application. This would save the applicant the time and cost of these activities. The applicant is responsible for obtaining the physical examination from their own physician and the chemical testing from an approved testing center.

According to DPOR, there currently are no branch pilot licenses for Wolf Trap to Smith Point. The current requirement that the licensee seeking to extend their licensure to cover an additional branch must satisfactorily complete 12 or more round trips with a currently licensed pilot of the branch for which the applicant seeks to extend their licensure thus cannot be done for Wolf Trap to Smith Point. With the proposed elimination of that requirement, the applicant would still need to display mastery for the branch by passing a practical examination approved by the Board and administered by the Board's examination committee for the waters of Chesapeake Bay from Wolf Trap to Smith Point. Not requiring the Federal First Class Pilot endorsement would save the pilot the initial \$190 application fee and associated time costs, as well as the \$95 renewal fee (and associated time costs) every five years.⁵ According to the agency, other than the fee paying and filling out associated forms, there are no other requirements to renew the Federal First Class Pilot endorsement that the branch pilots. To the extent that the proposed elimination to barriers for Wolf Trap to Smith Point licensure does encourage a pilot to obtain such licensure and serve the route, there may be some positive economic development.

³ Source: DPOR

⁴ Ibid

⁵ See

[https://www.dco.uscg.mil/Portals/9/NMC/pdfs/faq/fees_faq.pdf?ver=VLrPINyU178Lhs9alQxVpw%3d%3d×t](https://www.dco.uscg.mil/Portals/9/NMC/pdfs/faq/fees_faq.pdf?ver=VLrPINyU178Lhs9alQxVpw%3d%3d×tamp=1713898023460)
[amp=1713898023460](https://www.dco.uscg.mil/Portals/9/NMC/pdfs/faq/fees_faq.pdf?ver=VLrPINyU178Lhs9alQxVpw%3d%3d×tamp=1713898023460)

The impact of the proposal to state that the “licensee shall ensure” that the MRO performs his or her various duties is unclear. Individual pilots do not have control over the MRO. If the MRO failed to perform his or her duties properly, after perhaps a warning it seems likely that the Virginia Pilot Association would replace the MRO. It is not clear that the proposed change in the regulation would have any impact on the likelihood of that occurring.

Businesses and Other Entities Affected

The proposed amendments potentially pertain to the 39 full branch pilots and three or four limited branch pilots licensed in the Commonwealth, all of whom work for small businesses.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁷ Since there is no clear increase in net cost or reduction in net benefit for any entity, no adverse impact is indicated.

Small Businesses⁸ Affected:⁹

The proposed amendments do not appear to adversely affect small businesses.

⁶ 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.

⁷ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁸ 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.”

⁹ 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 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.

Localities¹⁰ Affected¹¹

The route for the waters of the Chesapeake Bay from Wolf Trap to Smith Point goes by the Counties of Mathews, Middlesex, Lancaster, and Northumberland. The proposed amendments do not appear to affect costs for local governments.

Projected Impact on Employment

The proposed amendments are not likely to substantively affect total employment.

Effects on the Use and Value of Private Property

The proposed reduction in barriers for Wolf Trap to Smith Point licensure may encourage one or more pilots to start serving that route. They likely would only do this if it increased the value of their businesses. The proposed amendments would not likely substantively affect real estate development costs.

¹⁰ “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.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.