



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Aviation Board
<b>Virginia Administrative Code (VAC) citation</b>	24 VAC 5-20
<b>Regulation title</b>	Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia
<b>Action title</b>	Amend the minimum airport licensing requirements, the conditional licensing process, and update process information
<b>Date this document prepared</b>	April 14, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of the proposed action is to consider changes to the regulations regarding airport licensure, with a focus on 24 VAC 5-20-140 Minimum requirements for licensing and 24 VAC 5-20-275 Conditional licenses. The proposed change for 24 VAC 5-20-140 would more closely align state minimum requirements with Federal Aviation Administration (FAA) standards. The proposed change for 24 VAC 5-20-275 would modify the process for addressing airports not in compliance with state minimum licensing standards. The modification would offer better defined solutions to address non-compliant situations that would lead to finite resolutions not currently realized, thereby improving the efficiency of the licensing process. The changes for minimum licensing requirements and conditional licenses will benefit the operation and safety of the statewide air transportation system.

The proposal also includes changes to clarify procedural information, reduce redundancy, update citations, and provide consistency throughout the chapter.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly*

*chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Under §5.1-2.2 (5) of the *Code of Virginia*, the Virginia Aviation Board has the authority to promulgate such rules and regulations relating to airports, landing fields and other aviation facilities as may be necessary to promote and develop safe aviation practices and operations.

In addition, under §5.1-7 of the *Code of Virginia*, the Virginia Aviation Board may, by regulation, adopt any other requirements for licensure of airports or landing areas that are related to the safety of aircraft using airports or landing areas, which must be licensed in accordance with the section.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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Section 5.1-7 of the *Code of Virginia* requires that any airport operated as a public-use facility must be licensed by the Virginia Department of Aviation (DOAV); presently there are 66 public-use airports in the Commonwealth. Of those airports, 23 airports do not meet current state minimum licensing requirements set forth in 24 VAC 5-20-140 and have been issued conditional licenses in accordance with §5.1-7 of the *Code of Virginia* and 24 VAC 5-20-275. Most of the existing non-compliant conditions are caused by natural growth. Many of the 23 airports have received multiple conditional licenses as the non-compliant conditions are not being addressed. As the conditional licenses expire, DOAV staff must continually repeat the agency's licensing process, which includes on-site inspections, resulting in an inefficient use of agency resources.

DOAV provides technical and funding assistance to airport sponsors for obstruction removal, whether the obstruction was identified through the licensing process or other inspection processes. In spite of this assistance and the temporary status of conditional licenses, non-compliant conditions continue to exist on or at airports. The Virginia Aviation Board and DOAV want to implement a more structured, efficient process of addressing non-compliant conditions and their inherent safety concerns, so that airports can retain their public-use licenses instead of having their licenses revoked in accordance with §5.1-7 of the *Code of Virginia* and 24 VAC 5-20-280. If such license is revoked, the airport would be removed from the statewide air transportation system and the sponsor would face the options of operating as a private-use airport or closing the airport. In addition, sponsors for facilities no longer operating as public-use airports would be required to reimburse the Commonwealth, on a pro-rata basis, for all outstanding grant obligations. Major elements of the proposed process would be the requirement for a written mitigation plan and Virginian Aviation Board recommendations that would result in the definite resolution of the situation. Modification of the state minimum licensing requirements to more closely align with current FAA standards would be a preparatory action for the proposed process.

In addition, other sections in 24 VAC 5-20 contain procedural information that needs to be updated or text that needs to be changed for clarity and consistency within the chapter.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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24 VAC 5-20-140 Minimum requirements for licensing would be changed so that the state minimum standards more closely align with FAA standards.

24 VAC 5-20-145 Waiver of minimum requirements would include updated procedural information and revised considerations for waivers.

24 VAC-5-20-275 Conditional license would be modified to provide procedural changes and solutions to address non-compliant situations as airports. The modifications include the introduction of a "Day/Visual Flight Rule (VFR) Use Only License", a new conditional license that allows restricted operations at non-compliant airport.

24 VAC 5-20-330 Aviation facilities constructed in whole or in part with state funds would be modified for consistency with Virginia Aviation Board policies.

24 VAC 5-20-160 Public waters landing rights would be modified to incorporate information on seaplane bases.

24 VAC 5-20-10 Definitions would be changed through a general statement to incorporate by reference terms defined in the *Code of Virginia*, which would reduce the number of terms in the section. In addition, terms to support proposed changes or previously missing terms would be added, terms not used in the chapter would be removed, and terms used and defined in 24 VAC 5-20-400 Appendix A: Airport Safety Zoning Ordinance would be removed.

Procedural information would be updated for the following sections:

24 VAC 5-20-120 Licenses

24 VAC 5-20-150 Transfer of licenses

24 VAC 5-20-170 Private or personal airports

24 VAC 5-20-190 Determination of hazard

24 VAC 5-20-200 Obstruction criteria

24 VAC 5-20-210 Obstruction permit process criteria

24 VAC 5-20-280 Sanctions, notice and appeals

Text would be modified for consistency within the chapter for the following sections:

24 VAC 5-20-180 Fees

24 VAC 5-20-300 Hazards

Citation references would be updated for the following sections:

24 VAC 5-20-220 Model airport safety zoning ordinance

24 VAC 5-20-280 Sanctions, notice and appeals

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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The alternative to the proposed regulatory changes is to take no action regarding the current requirements for licensing airports in the Commonwealth. If no action is taken, the cycle of issuing conditional licenses will continue, with varying results, outstanding safety concerns, and inefficient use of state resources. Situations could reach the point where licenses would be revoked and airports would be

removed from the statewide air transportation system due to safety concerns. If the proposed process changes are implemented, situations would reach a definite resolution, following a written mitigation plan. As one possible solution, the proposal offers a "Day/Visual Flight Rules (VFR) Use Only" license, a conditional license that allows restricted operations at an airport, thereby keeping the airport in the system and open to the public, but on a limited basis during daylight hours only.

If no action is taken regarding the minimum licensing requirements, many airports will continue to have non-compliant conditions; over time, some airports currently in compliance will no longer meet the minimum requirements as conditions on or at the airports, especially those caused by natural growth, will continue to worsen.

An alternative of incorporating FAA standards into the regulations instead of modifying state requirements is not feasible because 17 airports in the Virginia Air Transportation System Plan (VATSP) are not in FAA's National Plan of Integrated Airport Systems (NPIAS); therefore, such requirements would not be all inclusive.

If the proposed minimum requirements are in place, many of the airports with existing non-compliant conditions will meet the requirements, and over time, the number of airports no longer meeting the requirements will lessen. Of those airports that would still have non-compliant conditions, the scope of the work to address the non-compliant conditions would be smaller as the requirements are less restrictive.

Implementation of these regulatory proposals would increase safety; increase standardization; reduce costs for the state and airport sponsors, the majority of which are localities; increase administrative efficiency, and increase Virginia Aviation Board participation in the process.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so at the public hearing or via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email, or fax to Susan Simmers, Virginia Department of Aviation, 5702 Gulfstream Road, Richmond, VA 23250, phone 804-236-3632, extension 105, fax 804-236-3635, [susan.simmers@doav.virginia.gov](mailto:susan.simmers@doav.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The Virginia Department of Aviation (DOAV) partnered with the Virginia Airport Operators Council (VAOC) to prepare initial recommendations for changing the airport licensing regulations for the Virginia Aviation Board. The VAOC membership is comprised of owners, operators, and users of Virginia's public-use airports, as well as engineering consultant firms serving the airports. Members of the VAOC who participated in committee meetings represented the five airport classifications roles identified for the state (commercial service, reliever, general aviation regional, general aviation community, and general aviation local service). As the regulatory process continues, DOAV expects to continue working with VAOC.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

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The proposed regulation changes are expected to have no impacts on the institution of the family and family stability.