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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Aviation
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 5-20-10; 24 VAC 5-20-420
VAC Chapter title(s)	Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia
Action title	
Date this document prepared	02-18-2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 the subject matter, intent, and goals 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 or changes. If applicable, generally describe the existing regulation.

This is a new regulation that authorize cities, counties, towns, school divisions, park authorities, jail authorities and airport authorities (political subdivisions) to adopt local regulations for the take-off and landing of UAVs on properties owned by the political subdivision. Any such local regulation must be submitted to the Department of Aviation prior to adoption. Once approved by the Department, the political subdivision must advertise and hold a public hearing prior to acting on the regulation.

The regulation contains exceptions: those required by Va. Code §15.2-926.3 and additional exceptions to enable UAVs to be launched and landed during an emergency under certain circumstances and to enable sole occupants of public property to launch and land unmanned aircraft for the property possessed by the occupants.

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.

UAS: unmanned aircraft system
UAV: unmanned aircraft

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

Va. Code §15.2-926.3 became effective 1 July 2020. The third enactment clause requires the Department of Aviation to develop the regulations by 1 January 2021. The enactment clause further required the Department to consult with representatives of the UAS industry and others. The Department held several meetings with the groups identified in the enactment clause and modified the regulations several times over the course of six months. The coronavirus pandemic slowed the process.

The third enactment clause of Chapter 345, 2020 Regular Session states:

3. That by January 1, 2021, the Virginia Department of Aviation, in consultation with representatives of the unmanned aircraft system industry, small and medium-sized businesses utilizing unmanned aircraft systems, localities, and other stakeholders, shall develop rules and regulations specific to take-offs and landings pursuant to the provisions of this act. Such rules and regulations shall be in accordance with federal rules and regulations and shall include a process for adoption of an ordinance or regulation, exemptions to the ordinance or regulation, political subdivision training, and notification requirements.

While the Department was not able to meet the 1 January 2021 date, it is now prepared to submit the regulations. The enactment clause, which is statutory law, clearly requires that the regulations shall become effective in less than 280 days. This provision is not exempt under §2.2-4012. This creates the need for the emergency regulations process.

The nature of the emergency is that local political subdivisions are concerned about their inability to protect all users of the political subdivisions' properties from hazards associated with the launching and landing of UAVs on those properties. The concern was addressed by the General Assembly in its adoption of Va. Code § 15.2-926.3 in the 2020 session. No potential issues are known at this point, due to the extensive conversations the Department held with the affected interest groups, from citizen-oriented groups, to state emergency services personnel and unmanned aviation industry representatives.

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 or Acts and 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.

1. Department of Aviation
2. Va. Code §15.2-926.3.B; Chapter 345 of the Acts of the Assembly, 2020 Regular Session.

Subsection B:

B. Notwithstanding the prohibition of subsection A, a political subdivision may, by ordinance or regulation, regulate the take-off and landing of an unmanned aircraft, as defined in § 19.2-60.1, on property owned by the political subdivision. Such ordinance or regulation shall be developed and authorized in accordance with the rules and regulations promulgated by the Department of Aviation (the Department). Such rules and regulations shall be in accordance with federal rules and regulations and shall include a process for adoption of an ordinance or regulation, exemptions to the ordinance or regulation, political subdivision training, and notification requirements. The political subdivision shall report to the Department any ordinance or regulation adopted pursuant to this section, and the Department shall publish and update annually on its website, and any other website the Department deems appropriate, a summary of any such ordinance or regulation adopted.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

Public properties are regularly used by the public for recreational purposes, especially public parks. Prior to the enactment of Va. Code §15.2-926.3, local political subdivisions lacked the ability to regulate the launching and landing of UAVs on lands owned by the subdivisions. This led to hazards to citizens by UAV flights at public parks and other areas.

Further, while federal regulations prohibit flying of unmanned aircraft over federal and state prisons, no such restriction exists for local jails. The emergency regulations will authorize regional jail authorities and localities that operates a jail or to control the launching and landing of unmanned aircraft at those sensitive sites.

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.

The emergency regulations will allow certain local political subdivisions to: regulate when take-offs and landings may be done on the subdivisions' lands; identify areas of increased public safety or environmental concern where extra information must be provided by a potential user prior to a take-off or landing; require a demonstration of safety by the operator of an unmanned aircraft that weighs more than 55 pounds prior to launching or landing the aircraft. The regulations delineate the process for local adoption of regulations. The regulations provide exceptions for: landings due to malfunctions of the aircraft or its operating equipment; public safety officer or emergency services personnel use in performing his or her duties; operations by the US government; launching or landing to address declared emergencies; authority to allow the sole occupant of more than one-half acre of public land for an event to launch and land unmanned aircraft related to the occupant's use.

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.

- 1) Advantages: helps localities and certain political subdivisions reduce the risk of injuries or damage to property related to launching or landing unmanned aircraft, particularly in recreational properties, such as parks; Reduces the likelihood of persons launching drones on local properties. Disadvantages: limits the current, unfettered ability of unmanned aircraft operators to launch and land the aircraft on public properties.
- 2) Advantage: avoiding conflicts on local properties that could involve the Commonwealth in disputes. There are no disadvantages.
- 3) The regulation will provide unmanned aircraft operators consistent local regulations so they will know the terms of use and the limitations on launching and landing unmanned aircraft.

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.

Repeal of Va. Code §15.2-926.3

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department of Aviation 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, and (iii) the potential impacts of the regulation.

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 Amber Wilson, PhD. 5702 Gulfstream Road, Richmond, VA 23250, 804-236-3630, Fax: 804-236-3635, amber.wilson@doav.virginia.gov. 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 existing VAC Chapter(s) and the emergency regulation. If 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
5-20-10			Adds definitions for: Department, UAS, and Unmanned Aircraft.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
24VAC 5-20-10	Definitions: Commercial operator, Emergency Response Personnel, Locality, Operator, Own, Political Subdivision, Recreational Operator	49 USC 44809, FAA Regulations in Code of Federal Regulations, Title 14.	Makes clear the intent of the emergency regulation by defining necessary terms.
24VAC5-20-420	Sets out power of local political subdivisions to regulate take-offs and landings of unmanned aircraft, allows subdivisions to identify areas of high-risk that require additional steps for launching and landing of UAVs. Sets up process for a political subdivision to follow when adopting regulations. Adds extra proof of safe operations by operators of UAVs that weigh more than 55 pounds. Prohibits regulation of UAVs that weigh less than 0.55 pounds. Allows subdivisions to participate in UAS classes, competitions and similar events.	Federal regulations control the flight of UAVs, but not the authority to launch or land UAVs on public properties.	The principal impact will be the avoidance of impacts of UAVs into other users of publicly-owned properties. The rationale is to increase the safety to all users of public properties. That outcome is what is intended by the emergency regulation.

<p>24VAC5-20-430</p>	<p>Sets out procedures for political subdivisions to follow when they adopt the local regulations contemplated in the emergency regulation. Sets up transparency provisions the Department of Aviation must follow, so the public will have one site to discover where UAV take-offs and landings are allowed or restricted.</p>	<p>None</p>	<p>The rationale for the regulation is to increase the awareness of the public of proposed local regulations that may be adopted. The impact will be the increased ability of the public and of UAV operators to understand the specifics of the regulations that may be adopted.</p>
<p>24VAC5-20-440</p>	<p>Sets out exceptions to the authority of political subdivisions to regulate launching and landing UAVs: landings in event of failure of the craft; public safety officers and emergency service providers use; operations by the federal government; operations in an emergency declared by the Governor or locally; employees of political subdivisions in their work capacity; operations at streets and sidewalks; launching and landing by occupant of at least one-half acre of public land related to the use.</p>	<p>FAA regulations apply to the operations of UAVs in the situations described in the exceptions provision. However, those regulations do not extend to where the aircraft may be launched or landed.</p>	<p>The rationale for the exceptions is the awareness of the exceptional benefits of UAS use in government operations, responding to emergencies, and other situations included in the exceptions.</p>