



Final Regulation Agency Background Document

Agency name	Virginia Aviation Board
Virginia Administrative Code (VAC) citation	24 VAC 5-20
Regulation title	Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia
Action title	Amend the minimum airport licensing requirements, amend the conditional licensing process, and update process information
Date this document prepared	February 22, 2013

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*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The purpose of this regulatory action is to amend the existing regulation to align more closely state airport licensing requirements with Federal Aviation Administration (FAA) standards and to provide a new process to address non-compliant conditions and the issuance of conditional airport licenses. These changes would benefit the operation and safety of the statewide air transportation system. The proposal also updates procedural information and citations, reduces redundancy, and provides consistency throughout the chapter.

Statement of final agency action

Please 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 or board taking the action, and (3) the title of the regulation.

On February 21, 2013, the Virginia Aviation Board adopted final amendments to 24VAC5-20 Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia, specifically Part I Definitions; Part III Airports and Landing Areas; Part IV Obstructions to Airspace; and Part VI Modification, Suspension, or Revocation of Licenses.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

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 the 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.

The general powers and duties of the Virginia Aviation Board are provided in §5.1-2.2 and §5.1-2.2:1. Other actions for which the Virginia Aviation Board has been authorized to participate are found in §5.1-2.5 through §5.1-2.23.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

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 align state minimum requirements more closely with FAA standards. The proposed change for 24 VAC 5-20-275 would modify the process for licensing airports not in compliance with state minimum licensing standards. The modification would offer better defined solutions to address non-compliant conditions and 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. Without this proposed regulatory action, some public-use airports would remain in a non-compliant and less safe condition. Non-compliant conditions at airports may jeopardize the continuance of a public-use license, which could lead to the closure of an airport.

The proposal also reflects a recent change to the *Code of Virginia*, updates procedural information and citations, reduces redundancy, and provides consistency throughout the chapter.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

24 VAC 5-20-140 Minimum requirements for licensing: The section is amended so that the state minimum standards more closely align with FAA standards.

24 VAC 5-20-145 Waiver of minimum requirements: The section is amended by updating procedural information and revised considerations for waivers.

24 VAC-5-20-275 Conditional license: The section is amended to provide procedural changes and solutions to address non-compliant conditions at 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 airports.

24 VAC 5-20-330 Aviation facilities constructed in whole or in part with state funds: The section is amended for consistency with Virginia Aviation Board policies.

24 VAC 5-20-160 Public waters landing rights: The section is amended to incorporate information on seaplane bases.

24 VAC 5-20-10 Definitions: The section is amended 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 would be added, 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.

The following sections are amended by updating procedural information:

- 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

The following sections are amended to provide consistency within the chapter:

- 24 VAC 5-20-180 Fees
- 24 VAC 5-20-300 Hazards

The following sections are amended by updating citation references:

- 24 VAC 5-20-220 Model airport safety zoning ordinance
- 24 VAC 5-20-280 Sanctions, notice and appeals

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

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 64 public-use airports in the Commonwealth that meet the statutory requirement. Of those airports, 26 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 26 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.

The majority of non-compliant conditions are caused by natural growth obstructions in safety areas. 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. The funding ratio for obstruction removal projects is 80 percent state participation and 20 percent local participation. This funding assistance would continue after the proposed regulations are in place.

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 consistently 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. Major elements of the proposed process would be the requirement for a written mitigation plan prepared by an airport and Virginia Aviation Board recommendations that would result in the definite resolution of the non-compliant condition. State funding for mitigation plans, obstruction removal, and other compliance related safety projects is available to public-use airport sponsors, whether public and private entities. Modification of the state minimum licensing requirements to align more closely with current FAA standards would be a preparatory action for the proposed process.

If a public-use airport license is revoked, the airport would be removed from the statewide air transportation system, and the airport sponsor would face the option of operating the facility as a private-use airport or closing the airport. The sponsor would no longer be eligible to receive any funding from DOAV. In addition, a sponsor of an airport facility no longer operating as a public-use airport would be required to reimburse the Commonwealth, on a pro-rata basis, for all outstanding financial obligations awarded through DOAV.

Many of the airports with existing non-compliant conditions would meet the proposed minimum requirements for airport licensing and would not be placed under conditional airport licenses. Over time, the number of airports no longer meeting the requirements would lessen. Of those airports that would still have non-compliant conditions under the proposed regulations, the scope of the work and associated costs to address the non-compliant conditions would be reduced as the requirements are less restrictive. In addition, 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.

Currently, license inspections are conducted every seven years, and the identification of non-compliant conditions during those inspections initiates the conditional license process. The proposed regulation for conditional licenses would allow the conditional license process to be initiated any time non-compliant conditions are identified. Earlier intervention will reduce the extent of the non-compliant conditions that must be addressed, especially those caused by natural growth, which in turn will reduce the costs to meet and maintain compliance with the minimum regulations.

Implementation of these regulatory proposals would increase safety, increase standardization, reduce costs for the state and airport sponsors, increase administrative efficiency, and increase Virginia Aviation Board participation in the conditional license 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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
330	Before funds appropriated by the General Assembly of Virginia for the promotion of aviation or the construction or improvement of aviation facilities at a public-use airport, heliport, or seaplane base owned by a county, city, town, individual, corporation, authority, or commission may be allocated, the owner thereof shall enter into a written agreement with the department, acting through the director, that shall provide for operation of the airport, heliport, or seaplane base as a public-use facility for a minimum period of 20 years or as specified within a written agreement. The airport sponsor of an aviation facility and its transferees, successors, and assignees who fails to fulfill the period of operation specified in any such agreement shall be liable for the return of these state funds on a pro rata basis.	The word "owner" in the first sentence was changed to "airport sponsor".	The change was made for consistency within the chapter.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Thomas Trudeau, Airport Manager, Chesterfield County Airport	I see nothing in the proposed language that we couldn't comply with or would cause us any operational problems in compliance, as long as we follow the regulations. Thanks for the opportunity to review the proposed language.	No response needed.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		This section addresses the terms and definitions used in the chapter.	<p>The section is amended to incorporate by reference words or terms defined in §5.1-1 of the <i>Code of Virginia</i>. This incorporation provides consistency between the regulatory instruments and reduces redundancy. The terms to be removed due to this incorporation are aircraft, airman, airport, airspace, board, civil aircraft, department, landing area, person, and public aircraft.</p> <p>Several terms are to be removed as they would no longer be used under the proposed revisions to the minimum requirements in Section 140. These terms are heliport approach surface, heliport primary surface, heliport transitional surface, imaginary surfaces, and transitional surface.</p> <p>Several terms are to be removed as they are not applicable to airport licensing and they are defined within the context of the airport safety zoning ordinance in Section 400. These terms are conical surface, horizontal surface, and primary surface.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10 continued			<p>"Airport sponsor" is added to identify the entity responsible for the operation, maintenance, and capital development of an airport. This definition is based on the sponsor description provided in FAA Order 5100.38C and is consistent with the definition used in Virginia Aviation Board and DOAV funding instruments and policies.</p> <p>"Approach surface" is amended through the removal of dimensional information no longer effective or applicable with the proposed minimum requirements in Section 140.</p> <p>"Day/VFR Use Only License" is added to identify a new conditional license option initiated by DOAV and included in the proposed minimum requirements.</p> <p>"Helipad" is amended to match FAA AC 150/5300-18B.</p> <p>"Intrastate air transportation" is to be removed as it was not found in this chapter.</p> <p>"Obstacle" is amended to provide a better description and more closely align the definition with its use in the minimum requirements in Section 140.</p> <p>"Obstruction" is amended to specifically include obstructions resulting from natural growth. The inclusion of these obstructions highlights the importance of identifying and mitigating them.</p> <p>"Obstruction clearance plane" is amended through the removal of dimensional information as the specifications differ based on characteristics of an airport.</p> <p>"Private-use landing area license" is added to identify a new airport license type used in Section 170.</p> <p>"Runway object free area" is added to support revisions to the minimum requirements in Section 140. The definition is based on FAA AC 150/5300-13.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10 continued			<p>"Runway safety area" is amended for consistency with the proposed minimum requirements in Section 140.</p> <p>"Safety overrun" replaces the term overrun for consistency with FAA terminology. The definition was revised to provide a better description and for consistency within the chapter.</p> <p>"Seaplane base" is added to support its use in the proposed revision of the water landing areas in Section 160. The definition is based on FAA AC 150/5395-1.</p> <p>"Structure" is amended to provide a better description and for consistency with the definition for obstruction.</p>
120		<p>This section addresses which facilities need airport licenses and how to obtain a license.</p>	<p>This section is amended to present the information in the order of the need for license, and then how to obtain, amend, and renew a license. The renewal schedule is changed to allow the department flexibility to meet new needs should legislation, standards, policy, processes, and procedures change.</p> <p>The revision also provides process and procedure updates. Text changes are made for consistency within the chapter and to reduce redundancy.</p>
140		<p>This section addresses the minimum requirements for airport licensing.</p>	<p>This section is amended to align state airport licensing requirements more closely with FAA standards. Terms are changed to those that better define the purpose of the requirements, and some dimensions are changed. Several requirements, such as runway safety area length and approach surface dimensions based on FAA AC 150/5300, are added for clarification and consistency. The information is presented in a new order for better readability and reference.</p> <p>The requirement for an unobstructed transition surface is removed as the utilization of the runway object free area more closely aligns the state requirements with FAA standards.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
140 continued			<p>The requirement related to ingress and egress from both ends of a runway is removed as it would be in conflict with the revision for effective runway length.</p> <p>Minimum requirements for the conditional “Day/VFR Use Only License” are added to provide information for the revision of conditional licenses in Section 275.</p> <p>The requirement related to runways for short-takeoff-and-landing aircraft is removed as DOAV does not support bringing into the statewide air transportation system any airport that cannot meet the minimum licensing requirements.</p> <p>The dimension reference for heliports is changed to reflect the variable sizing of heliports per FAA AC150/5390-2B.</p> <p>A requirement is added to provide the minimum requirements for seaplane bases for consistency within the chapter and to support revisions to Section 160.</p> <p>Text changes are made for clarity, consistency within the chapter, and redundancy reduction.</p>
145		This section addresses the process for waivers to the minimum requirements for airport licensing.	<p>The section is amended to clarify the application process and the Virginia Aviation Board's role in the process. The considerations for the granting of a waiver have been modified for clarity.</p> <p>A portion of the text dealing with exemptions is amended to match legislation passed by the 2011 General Assembly. The remaining portion is removed as it would not apply with the implementation of the proposed minimum requirements.</p>
150		This section addresses the transfer of airport licenses	The section is amended to provide information and updates for the transfer process.
160		This section addresses the need for licensing seaplane bases.	The section is amended to provide information consistent with that for airports and heliports.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
170		This section addresses the need for licensing or registering private landing areas.	<p>The section is amended to clarify the type of facilities that must be registered and to identify facilities that would receive a Private-use Landing Area license.</p> <p>The section is amended to update information on the licensing and registration process for private landing areas.</p> <p>The section is amended to include information on hospital aviation facilities which had previously been in Section 330. This information is moved as it is consistent with this section. The funding of such facilities is removed as funding is not available for facilities outside of the statewide air transportation system.</p>
180		This section addresses airport licensing fees.	The section is amended for consistency in term references.
190		This section addresses hazard determination.	The section is amended to update information on the process. The section is also amended for consistency in term references.
200		This section addresses obstruction criteria.	The section is amended for consistency with updates in the previous section.
210		This section addresses the obstruction permit process.	The section is amended to update information on the process and the <i>Code of Virginia</i> citation.
220		This section addresses the model airport safety zoning ordinance.	The section is amended to update <i>Code of Virginia</i> citations.
275		This section addresses conditional airport licenses.	<p>The section is amended through a new process for conditional licenses which provides for distinct resolutions to non-compliant conditions where minimum airport licensing requirements are not being met. The process details actions to be taken by an airport sponsor and licensing recommendations available to the Virginia Aviation Board. The new process is proposed to promote safety at airports and to insure consistency in the handling of these situations.</p> <p>The section is amended by allowing the process to be initiated any time a non-compliant condition is identified, instead of only during a license inspection conducted once every seven years.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
280		This section addresses sanctions, notices, and appeals.	The section is amended for consistency in term reference.
300		This section addresses airport hazards.	The section is amended for consistency in term reference.
330		This section addresses aviation facilities constructed with state funds.	<p>This section is amended to reflect a recent change in Virginia Aviation Board policy and for consistency in term reference.</p> <p>The portion of the section related to hospitals is moved to Section 170 as it is consistent with the information provided in that section.</p>