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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Aviation
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	24 VAC 5-20-10; 24 VAC 5-20-420
<b>VAC Chapter title(s)</b>	Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia
<b>Action title</b>	
<b>Date this document prepared</b>	12-8-2021

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 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. 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.*

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UAS: unmanned aircraft system

UAV: unmanned aircraft

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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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 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 and Acts of 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.*

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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

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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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.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no restrictions in the regulations that exceed federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

None

Localities Particularly Affected

None

Other Entities Particularly Affected

Drone owners or operators who wish to launch and land UAS on properties owned by local political subdivisions that have adopted local regulations under the state regulations.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	Costs: Managing data of local subdivision regulations. a) Aviation special fund b) Ongoing c) All costs will be absorbed.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	Costs: cost of managing local regulation. Fees: some operators will pay minor fees.
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Benefits the regulatory change is designed to produce.	Increased harmony of uses of local jurisdiction properties by UAS users and other members of the public.
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**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	All individuals and businesses that intend to launch or land UAS on the lands of local jurisdictions where the jurisdiction has adopted a local regulation will be affected.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Minimum number, as very few local political subdivisions are expected to adopt local regulations.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Costs: registration fees for some activities. a) operator will need to maintain the written permission for use. De minimis. b) None c) Some fees will be required. De minimis. d) None e) Time to apply for use permit online. De minimis.
Benefits the regulatory change is designed to produce.	Increased harmony of uses of local jurisdiction properties by UAS users and other members of the public.

**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

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative*

*regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

The regulations were drafted as a result of numerous meetings of stakeholders over nearly two years of meetings. Numerous alternatives were considered, but the group of stakeholders largely agreed on the current regulation as the best compromise to obtain compliance with the legislation that created the process and to achieve the goals of the legislation.

**Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

This is not a periodic review effort.

- 1) The regulation will be needed so long as the legislation creating the need is in existence.
- 2) No complaints received.
- 3) The regulation is not complex.
- 4) No overlap or duplication of federal or state laws.
- 5) The regulation was promulgated following more than two years of negotiations with industry and local government stakeholders.

The regulation is of such limited impact that it, by its nature, will have a minimal impact on small business.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

Commenter	Comment	Agency response
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<p>Wing Aviation, LLC</p>	<p>Wing Aviation submits the following comments on the above-captioned rule, which is intended to implement HB 742, codified at Virginia Code 15.2-926.3, into Title 24 of the Virginia Administrative Code.</p> <p>Wing commends Virginia for its work in positioning itself as an early leader in the promotion and adoption of emerging technologies such as drones, or unmanned aircraft systems (UAS). As a general matter, Wing encourages the Commonwealth to ensure that any local regulation promotes a vibrant and innovative UAS industry in the Commonwealth and supports access to the airspace for drone enthusiasts. We therefore request that DOAV actively embrace its role, as laid out in HB 742, of overseeing and reviewing any and all regulations put forward under this legislation by political subdivisions to ensure they do not cause undue burden to drone operations, avoid a complicated and burdensome patchwork of different rules between localities, and support ongoing UAS innovation in the Commonwealth. Absent rigorous DOAV oversight and guidance, a proliferation of harmful, confusing or poorly-written local regulations could stifle the development of the industry and jeopardize Virginia’s place as a leader in the development of autonomous technology.</p> <p>Wing supports numerous provisions within the rule that specifically aim to further the goals stated above. Specifically, Wing strongly supports subsection 24VAC5-20-440(A)(1), which reinforces the right of commercial operators to operate in compliance with applicable Federal Aviation Administration (FAA) regulations, and subsection 24VAC5-20-440(B), which excludes the vehicular travel portions of public highways and streets from take-off and landing areas subject to political subdivision regulation.</p>	<p>The Virginia Department of Aviation has received and acknowledged the comments submitted by Wing Aviation, LLC.</p> <p>24VAC5-20-420 subsection C (iii) has been revised to include language that the take-off or landing can be carried out without harm to the identified public safety risk or natural resource.</p> <p>24VAC5-20-420 subsection D has been revised to exclude any licensed airport or licensed UAS facility from the regulation.</p>
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	<p>Below please find comments and suggestions on specific provisions within the above-captioned rule.</p> <p>24VAC5-20-410 Definitions for Part VIII</p> <p>24VAC5-20-410 defines political subdivision to mean: "(i) a locality, (ii) a school division, or (iii) any park authority, jail authority or airport authority that has the power to enact or promulgate ordinances, or regulations having the force or effect of law."</p> <p>Wing believes this regulation should align its definition of 'political subdivision' with what currently exists in Virginia code, or simply be limited to counties, cities, and towns within the Commonwealth.</p> <p>The current definition would grant numerous subdivisions within a county, city or town the authority to promulgate regulations dealing with limitations on UAS operations. These entities may not have the resources or expertise to develop UAS rules or conduct UAS risk assessments as described in the bill. This broad definition could lead to a complicated, inconsistent, or confusing patchwork of restrictions that would run counter to Virginia's overarching principle of encouraging the growth of the drone industry and the safe integration of UAS into the airspace.</p> <p>For this reason, the definition of political subdivision should be narrowed to localities (counties, cities and towns) or simply reference the existing definition of political subdivisions found at Code of Virginia, § 8.01-385 (3)(iii).</p> <p>24VAC5-20-420 Political subdivision powers</p> <p>Subsection (C)</p>	
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	<p>Wing has concerns regarding language in subsection (C) of 24VAC5-200420, Political subdivision powers, which reads in part that a political subdivision:</p> <p>“...may designate specific properties of increased concern for public safety or risk to natural resources where an operator seeking to use the property must show the purpose of the take-off and landing, what steps the operator will take to limit risk to the public or to natural resources, and information to demonstrate that the take-off and landing can be carried out safely. On such properties, the regulation may deny permission to take-off or land unmanned aircraft, unless the operator can demonstrate the safety of the take-off and landing, based on the information provided.”</p> <p>Concerning the purpose of the take-off and landing, a commercial operator should not be required to provide such a showing. If a commercial operator is conducting its operations under the terms for which it has been approved by the FAA, the purpose of that operation itself should not have relevance to any risk to public safety or natural resources.</p> <p>In addition, subsection (C) appears to grant political subdivisions the authority to make safety determinations about UAS operations. Operational safety is the exclusive purview of the FAA, which has the requisite expertise to properly assess risks and mitigations from a safety perspective. Overlapping and/or contradictory safety requirements could pose a safety challenge, and inhibit UAS innovation and operations in the Commonwealth. In addition, operational risk assessments may be highly complex, and applications/notifications are unlikely to be properly processed by a political subdivision.</p>	
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	<p>For these reasons, Wing believes the language referencing political subdivisions making safety determinations should be eliminated or altered to acknowledge FAA's role and curtail the role of political subdivisions in safety-based assessments.</p> <p>Subsection (D)</p> <p>Subsection (D) states: "For unmanned aircraft with a takeoff weight of 55 pounds or more, the regulations may require the operator to provide information prior to any take-off or landing, demonstrating the safety of the take-off and landing."</p> <p>As stated above, operational safety is the exclusive purview of the FAA, which has the requisite expertise to properly assess risks and mitigations from a safety perspective. Overlapping and/or contradictory safety requirements could pose a safety challenge, and inhibit UAS innovation and operations in the Commonwealth. In addition, operational risk assessments may be highly complex, and applications/notifications are unlikely to be properly processed by a political subdivision.</p> <p>For these reasons, Wing believes subsection (D) should be eliminated or altered to acknowledge FAA's role and curtail the role of political subdivisions in safety-based assessments.</p>	
<p>Gregory Walden</p>	<p>The Small UAV Coalition submits the following comments on the above-captioned rule, which is intended to implement HB 742, codified at Virginia Code 15.2-926.3, into Title</p>	<p>The Virginia Department of Aviation acknowledges the concerns raised in the and thanks Mr. Walden for his insightful comments. However, the Department believes the requested changes will negate the purpose and intent of the regulation.</p>

	<p>24 of the Virginia Administrative Code.</p> <p>General comments</p> <p>Virginia should be applauded for its leadership in the development of the drone industry</p> <p>The Coalition wishes to acknowledge that the Commonwealth of Virginia was early to recognize the economic and consumer benefits of drones and by prohibiting the creation of a patchwork of varying and inconsistent local regulations in its 2018 law preempting local regulation of drones. As a result, Virginia became a leader in drone research and development and investment.</p> <p>Virginia’s rule is generally consistent with the constitutional and statutory allocation of responsibility.</p> <p>As a general matter, the Coalition supports subsection 24VAC5-20-440(A)(1) that no political subdivision may prohibit the take-off or landing of an unmanned aircraft by a commercial operator in compliance with Federal Aviation Regulations.</p> <p>This provision is consistent with the Federal Aviation Act of 1958, as amended, which was an exercise by Congress of its delegated power under the Commerce Clause of the United States Constitution. The Federal Aviation Administration (FAA) has plenary authority over aircraft operations, including unmanned aircraft operations, in the nation’s airspace. See State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Office of FAA Chief Counsel (Dec. 17, 2015), and cases cited therein. Accordingly, any State or local regulation of aircraft must serve important State and local interests, be narrowly tailored to serve such interests, and not discriminate against, or cause an undue burden on, interstate commerce.</p>	<p>24VAC5-20-420 subsection C (iii) has been revised to include that the take-off or landing can be carried out without harm to the identified public safety risk or natural resource.</p> <p>24VAC5-20-420 subsection D has been revised been modified to exclude any licensed airport or licensed UAS facility from the regulation.</p>
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	<p>The Coalition also supports subsection 24VAC5-20-440(B), which excludes the vehicular travel portions of public highways and streets from take-off and landing areas subject to political subdivision regulation. We further recommend that this provision be expanded to include rights of ways adjacent to the public highways and streets.</p> <p>Four provisions in the Virginia rule are subject to federal preemption unless revised</p> <p>The provisions in 24VAC5-20-420 that raise concerns under this constitutional rubric are:</p> <ul style="list-style-type: none"> <li>• (B) A political subdivision may regulate the hours during which take-offs and landing are allowed.</li> <li>• (C) For certain designated specific properties, the operator must make a safety showing to the political subdivision, which can deny permission unless the safety of the operation is demonstrated to the subdivision</li> <li>• (D) For UAS over 55 lbs., the regulation may require the operator to demonstrate the safety of take-off and landing</li> <li>• (E) No political subdivision shall require a permit for take-off and landing of UAS in areas designated for UAS use.</li> </ul> <p>The Coalition believes these provisions should be revised or limited, as recommended below, to avoid any undue burden on interstate commerce and any conflict with Federal Aviation Regulations.</p> <p>Specific comments</p> <p>Section 24VAC5-20-420 Political Subdivision Powers</p> <ul style="list-style-type: none"> <li>• Revise subsection (B) to read:</li> </ul> <p>The regulation may provide for times when take-offs and landings are allowed, which shall apply specifically to each</p>	
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	<p>designated property or a class of such properties that share the same specific zoning designation and use.</p> <p>The regulation of times for take-offs and landings should not apply across-the-board to all public property in a political subdivision but should be tailored to each specifically designated property or a category of properties. Any locality-wide time restriction will be overbroad and could interfere with interstate commerce.</p> <ul style="list-style-type: none"> <li>• Revise subsection (C)</li> </ul> <p>We continue to be concerned with the first paragraph of subsection (C) for two reasons:</p> <p>First, a commercial operator should not be required to show the purpose of the operation. Apart from the fact that a commercial operator should be presumed to takeoff or land in furtherance of its business and for no other reason, the purpose of a flight has no bearing on public safety or natural resources.</p> <p>Second, this language empowers political subdivisions to evaluate the safety of the UAS operation, and to deny permission unless the operator provides a safety demonstration sufficient for the locality. As we have stated in comments submitted on previous drafts of this rule, the safety of UAS operators and operations is solely the responsibility of the FAA. Political subdivisions do not have the experience, expertise, or resources to evaluate safety risks or mitigations of such risks, nor should they be expected to, as this is the FAA's responsibility. At most, a political subdivision may require compliance with and a commitment to comply with the Federal Aviation Regulations.</p> <p>The FAA's recognition of the local role in regulating the take-off and landing of aircraft -- both manned and</p>	
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	<p>unmanned -- is an acknowledgment of a local jurisdiction's police powers, but such powers do not include aviation safety regulation; that responsibility rests with the FAA. Accordingly, the Coalition recommends the Department of Aviation consult with the FAA, and in the absence of the FAA's approval of this language, the three showings in the first paragraph of subsection (C) should be deleted.</p> <p>The Coalition supports a clarification that granting a permit should be a ministerial act; political subdivisions should not be vested with authority to deny a permit for any reason other than the operator is unwilling to certify that it is in compliance with FAA regulations, lest the discretion to grant a permit intrude on the FAA's authority over UAS and UAS operators. The Coalition recommends this limiting text to reflect this principle.[1]</p> <p>To obtain a permit, the applicant may be required only to provide the name, address, phone number, and FAA remote pilot certificate number for the pilot in command under the permit, and to affirm that the applicant is fully compliant with applicable FAA regulations, and the conditions and limitations of any certificate, waiver, or exemption thereunder.</p> <p>We support the requirement in the second paragraph of subsection (C) that any prohibition should be based upon a finding that takeoffs and landings on that property pose a "specific and significant risk" to public safety or natural resources. We also support requiring a map of this property in "electronic, computable, machine readable, and transmissible form."</p> <p>We recommend that the rule require any prohibition be narrowly tailored to the risk identified to public safety or natural resources, both as to the local property area designated and the</p>	
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	<p>times during which take-offs and landings will be prohibited. This additional requirement will help ensure that any prohibition will not place an undue burden on, or discriminate against, interstate commerce.</p> <ul style="list-style-type: none"> <li>• Delete or revise subsection (D)</li> </ul> <p>Subsection (D) allows a political subdivision to require a safety showing for a UAS weighing 55 pounds or more to conduct a take-off or landing at a specifically designated area. This language suffers from the same legal infirmity in subsection (C). The FAA has authorized the operation of UAS weighing more than 55 pounds by exemption under 49 U.S.C. 44807 (and previously under section 333 of Public Law 112-95 (2012)), and the Coalition recommends that no distinction based on weight should be made in this rule. A political subdivision should only be allowed to require compliance with applicable FAA regulations – 14 C.F.R. Part 107 for commercial drones weighing not more than 55 lbs., including any waiver granted under Part 107, section 44807 exemption for any operation of a drone weighing more than 55 lbs., and airworthiness and air carrier certification.</p> <p>At a certain weight, UAS may need an airport runway to conduct take-offs and landings; in such cases, the operations should not be governed by this rule.</p> <ul style="list-style-type: none"> <li>• Revise subsection (E) to read:</li> </ul> <p style="padding-left: 40px;">No permit may be required except for take-offs and landings at a specifically designated local government property.</p> <p>By prohibiting the requirement of a permit for take-off and landing drones in areas designated for UAS use, subsection (E) implicitly allows a political subdivision to require a</p>	
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	<p>permit to conduct a take-off or landing from a particular local government property. The revised language makes this limitation explicit.</p> <p>Section 24VAC5-20-430 Procedure for adopting an ordinance or regulation</p> <ul style="list-style-type: none"> <li>• Revise subsection (A) to add “on property owned by it” after “aircraft”</li> </ul> <p>This language would remove any ambiguity on whether this section bestows on a political subdivision any authority in addition to the authority provided in section 24VAC5-20-420.</p> <ul style="list-style-type: none"> <li>• Revise subsection (B) by adding the following text after the end of the subsection:             <p style="margin-left: 40px;">The political subdivision must also submit to the department its findings of need for public safety or protection of specific natural resources. If the regulation is modified in a material way as a result of the review by the department, the political subdivision must advertise the revised regulation in its entirety.</p> </li> <li>• Revise subsection (C)             <p style="margin-left: 40px;">A locality may regulate the take-off and landing of unmanned aircraft on property owned by the locality by ordinance or regulation.</p> </li> </ul> <p>The first sentence is duplicative of the first sentence of the subsection (A) and can therefore be deleted. It also may be misread as granting broad regulation authority if not limited explicitly to take-offs and landings.</p> <ul style="list-style-type: none"> <li>• Revise the last sentence of subsection (E) to read:</li> </ul>	
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	<ul style="list-style-type: none"> <li>No regulation shall take effect until the department determines that it is consistent with this chapter and published on the department’s website.</li> <li>Move subsection (F) to follow subsection (G) and renumber subsections accordingly.</li> </ul> <p>Section 24VAC5-20-440 Exceptions</p> <ul style="list-style-type: none"> <li>As noted above, the Coalition strongly supports subsection A, paragraph (1).</li> </ul> <p>As we read this exception, no political subdivision may prohibit the take-off or landing of a UAS by a commercial operator in compliance with FAA regulation, even on local government property designated under 24VAC5-20-420. The locality may require a permit to do so, and the commercial operator may not be able to take-off or land at certain times, but no political subdivision may by ordinance or regulation prohibit the take-off and landing of a drone by a commercial operator in compliance with FAA rules. However, the Coalition is concerned that a locality may use the permit process effectively to prohibit take-off or landing, even if not set forth in an ordinance or regulation. Accordingly, we recommend that subsection (A) be revised to state:</p> <p style="padding-left: 40px;">No ordinance or regulation may prohibit, and no exercise of the permitting process may effectively prohibit:</p> <ul style="list-style-type: none"> <li>The Coalition also supports subsections (B) and (C). Subsection (B) should be revised to read:</li> </ul> <p style="padding-left: 40px;">No political subdivision’s local regulation enacted pursuant to the authority in this chapter shall apply to take-offs and landings on the vehicular travel portions of public highways and streets, including rights of way</p>	
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	<p>adjacent to such public highways and streets.</p> <p>Section 24VAC5-20-450 Federal laws and regulations</p> <p>Consistent with the congressional delegation of authority to regulate aviation authority to the FAA , this section should also address local government restrictions as well as allowances. We suggest adding the words "or restrict" as set forth below.</p> <p>Nothing in this chapter shall allow or restrict any use of unmanned aircraft in any manner inconsistent with the federal laws and regulations, including Title 14 of the Code of Federal Regulations.</p> <p>Respectfully submitted,</p> <hr style="width: 20%; margin-left: 0;"/> <p>Gregory S. Walden          Aviation Counsel          Small UAV Coalition          1990 K Street NW          Washington, DC 20006          gregory.walden@dentons.com          202-496-7436</p> <hr style="width: 20%; margin-left: 0;"/> <p>[1] In Subsection (F), the reference to subsection (B) should be changed to "subsection (C)".</p>	
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**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.*

A public hearing will not be held following the publication of this stage of this regulatory action.

## 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 proposed 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 5-20-420 1-1	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.
2-1	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	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.

	of UAVs that weigh less than 0.55 pounds. Allows subdivisions to participate in UAS classes, competitions and similar events.		
3-1	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.	None	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.
4-1	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.	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.	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.

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

**Table 3: Changes to the Emergency Regulation**

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage

