



Periodic Review / Retain Regulation Agency Background Document

Agency name	Commissioner of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-20
Regulation title	Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law
Document preparation date	January 3, 2013

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

The statutory authority is Section 58.1-3230 of the Code of Virginia and Chapter 705 of the 2001 Acts of Assembly.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

In the 1970's, the General Assembly passed the Virginia Land Use Assessment Law to provide local governments with the option of assessing real estate devoted to agricultural or horticultural use based on its productivity rather than the normally required fair market value. Section 58.1-3230 of the Code of Virginia states that, " 'Real estate devoted to agricultural use' shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the

Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.” This section also states that, “ ‘Real estate devoted to horticultural use’ shall mean real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; and nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.”

Section 58.1-3230 makes it clear the Commissioner will establish standards and these standards will be in the form of regulations promulgated through the regulatory process required under the APA. Current law would need to be changed to permit alternatives to 2 VAC 5-20. This law right now makes it the duty of the Commissioner to provide advice or opinion on a case-by-case basis in response to questions from local government officials regarding the classification of real estate devoted to agricultural or horticultural uses. But under one possible alternative, this law would be amended to remove the provision for the Commissioner’s standards/regulations. However, without these standards, local government officials would need to constantly seek the Commissioner’s opinion if they did not have some official guidance regarding the classification of real estate devoted to agricultural or horticultural uses. The current standards provide a uniformity that benefits landowners or local officials in their efforts to seek/provide objectiveness and impartiality in the classification of real estate.

A second possible alternative would be to include something similar to the Commissioner’s standards in the law. However, this approach to avoiding the regulation would remove the opportunity for the public to participate in the three-stage regulatory process that is required by the APA. At any time a citizen may petition the Commissioner to initiate rulemaking to address concerns regarding the standards. The legislative process is certainly important to the citizens of the Commonwealth, but the current process required by the APA appears to be a better one for providing broader, more comprehensive public input.

We believe that the current standards provided in 2 VAC 5-20 are the least burdensome for both landowners, who include small, medium and large business operators as well as local governments which depend on a source of revenue from real estate tax assessments. The current standards are a product of an on-going process of refinement that goes back about 40 years. The most recent work to update 2 VAC 5-20 was completed in 2006 in response to legislative changes and the need to update the regulation to address changes in the industry. The thorough review of the regulation that was conducted during 2002-2006 to complete the last update was conducted with input from the Office of the Attorney General. An important goal of this last review and revision of 2 VAC 5-20 was to improve the value and clarity of the standards for all users.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

During the comment period, only one comment from the public was received. The commenter was Trey Davis of the Virginia Farm Bureau Federation who spoke in support of retaining 2 VAC 5-20 in its current form.

Commenter	Comment	Agency response
Trey Davis, Virginia Farm Bureau	The Virginia Farm Bureau supports the current guidelines. The current standards of classification	The agency agrees with the position that the current standards for classification of real estate devoted to agricultural and horticultural

Federation	adequately work for landowners and farmers in Virginia. We recommend the standards remain the same for land enrolled in Land Use Assessment and no alterations occur.	uses should be retained as written.
------------	---	-------------------------------------

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation meets the criteria set out in Executive Order 14 (2010). It is necessary for the protection of the health and welfare of the Commonwealth’s citizens. Without this regulation, local government would not have objective and uniform guidance in classifying farmland according to use as it implements its local land use ordinance. The local use assessment ordinance is meant to encourage the continued use of farmland for the production of agricultural and horticultural products needed by Virginia’s consumers. This regulation provides uniform standards that benefit farmers and landowners who depend on lower tax assessments on farmland to maintain their agricultural and horticultural production operations and to employ other local persons whose jobs depend on the continuation of these operations.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The agency is recommending that the regulation stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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, include a discussion of the agency’s determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

There is a continued need for this regulation. This regulation is necessary for the protection of the health and welfare of Virginia’s citizens. The great majority of Virginia’s localities have adopted local ordinances that allow them to assess lands devoted to agricultural and horticultural production use based on their productivity rather than fair market value. This local option permits each locality to make a commitment to promoting and preserving agricultural and horticultural production from local farmland. The one comment

received from the public recognizes the necessity of this regulation and the importance of continuing it in its current form.

The regulation is not complex. In fact, over the past 40 years, the agency has continued its effort to improve the standards, making them clearer to the user.

This regulation does not overlap, duplicate or conflict with federal or state law or regulation. This regulation is not mandated by any federal law or regulation and is the only state regulation that addresses the subject matter.

The most recent amendments to the regulation which took effect in 2006 were in response to an action of the General Assembly to provide local government and landowners with increased flexibility in dealing with crops such as grapes that take more one or two years to be harvested. As Virginia agriculture continues to add new crops to the production mix, we can expect that there may additional needs for the state legislature to consider amendments to the law upon which this regulation is based. As the changes occur, the agency will take the regulation to the public through the regulatory process seek input on how this regulation can be more useful to both local government and Virginia's citizens.

Maintaining adequate production of local food and fiber products is recognized as being both very desirable and beneficial to Virginia's citizens. In addition, helping local farmers (who are mostly small business persons) maintain their operations and providing incentives to local landowners to keep their land in farming help localities maintain a strong economy and an ongoing demand for supplies and services for local farmers, processors and related agricultural industries. The agency considered what would happen if there were no regulation that provided standards for classifying land devoted to agricultural and horticultural uses. Based on years of experience in responding to local officials, the agency concluded that there was a continued need for this regulation. Without a specific regulation providing uniform and objective guidance concerning the classification of lands devoted to agricultural and horticultural use, local governments would be faced with the difficulty of making critical decisions about what lands will receive a lower assessment and which lands will not. Having objective and reliable guidance is essential to local officials in their efforts to insure a level playing field for all landowners who apply for lower assessments based on the land use classification.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

The impact of the regulation on the institution of the family and family stability can be seen in how this regulation provides essential support to local government efforts to encourage the preservation of farmland and to provide incentives for keeping local farm operations in business. Virginia benefits greatly from having thousands of small to medium size family farms that are producing food and fiber products for family members and to sell to consumers at on-farm stands and local farmers' markets or less directly through retail food stores that market their products. A significant number of these farm families depend on income from farm production and off-farm employment. The success of local government in providing a reduced tax assessment of farmland that is based on productivity can reduce a major operation cost for farm families and thereby support their efforts to maintain a viable farm operation and give them greater financial stability.

Use assessment helps to keep more family farms in operation and thereby helps the farm families produce and market more of their local commodities to other local families who benefit from the healthy foods at reasonable prices. Thanks to the support of the Governor and the General Assembly, the agency has increased its work with local farmers to market their local commodities to local schools. Having healthy, nutritious foods at local schools should benefit local students in their development of lifelong healthy eating habits.