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August 2022

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Proposed Regulation
Agency Background Document

Agency name	Commissioner of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-20
VAC Chapter title(s)	Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law
Action title	Amendments in response to periodic review comments
Date this document prepared	August 7, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

The Land Use Assessment Law (Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia (Va. Code § 58.1-3229 et seq.)) authorizes localities that adopt a land-use plan to adopt an ordinance to provide for the use value assessment and taxation of real estate classified in Va. Code § 58.1-3230. Section 58.1-3230 establishes four special classifications of real estate for the purposes of the Virginia Land Use Assessment Law, including “real estate devoted to agricultural use” and “real estate devoted to horticultural use.” The definitions of both real estate devoted to agricultural use and real estate devoted to horticultural use require the Commissioner to prescribe uniform standards for the classification of real estate as devoted to agricultural or horticultural use in accordance with the Virginia Administrative Process Act (Va. Code § 2.2-4000 et seq.). As directed by this requirement, the Commissioner promulgated 2 VAC 5-20, *Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law*, which first became effective in 1988.

The Commissioner proposes amendments to 2 VAC 5-20 in response to comments received during a periodic review of the regulation that concluded in October 2025. One commenter requested that subsection B of Section 20 be amended, and two commenters requested that alternative language be used for subsection A of Section 40. With respect to subsection B of Section 20, which establishes which real estate devoted to the production of trees or timber products may qualify for classification as real estate devoted to agricultural use, the Commissioner proposes amendments pertaining to real estate that is producing trees incidental to other farm operations. With respect to subsection A of Section 40, which provides a list of documents that may be useful for demonstrating that a parcel of real estate meets the standards established in 2 VAC 5-20, the Commissioner proposes clarifying amendments.

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.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Land Use Assessment Law" or "Law" means Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia.

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 the ORM procedures, "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."

In May 2025, the Commissioner initiated a periodic review for this regulation, which concluded in October 2025. In response to comments received during that periodic review, the Commissioner initiated a Notice of Intended Regulatory Action (NOIRA), which was published in the *Virginia Register of Regulations* on January 12, 2026. No public comments were received during the 30-day public comment period for the NOIRA, which closed on February 11, 2026. The amendments proposed by the Commissioner are in response to the comments received during the periodic review of this regulation.

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.

Section 3.2-102 of the Code of Virginia (Code), in relevant part, vests with the Commissioner other powers and duties as may be prescribed by law.

Section 58.1-3230 of the Land Use Assessment Law authorizes the Commissioner to prescribe uniform standards for the classification of real estate devoted to agricultural and horticultural use.

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 is intended to solve.

This regulation currently prescribes uniform standards that localities must use when determining for the purpose of land-use value assessment and taxation whether certain real estate is real estate devoted to agricultural use or real estate devoted to horticultural use. Without this regulation, local Commissioners of the Revenue or assessing officers would not have uniform standards with which to determine whether certain real estate is real estate devoted to these uses. The standards established in this regulation as well as the proposed amendments ensure equitable tax treatment of similar land uses across the Commonwealth and support the economic welfare of both localities and citizens.

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 Commissioner proposes amendments to 2 VAC 5-20 in response to comments received during a periodic review of the regulation that concluded in October 2025. One commenter requested that subsection B of Section 20 be amended, and two commenters requested that alternative language be used for subsection A of Section 40. With respect to subsection B of Section 20, which establishes which real estate devoted to the production of trees or timber products may qualify for classification as real estate devoted to agricultural use, the Commissioner proposes amendments pertaining to real estate that is producing trees incidental to other farm operations. With respect to subsection A of Section 40, which provides a list of documents that may be useful for demonstrating that a parcel of real estate meets the standards established in 2 VAC 5-20, the Commissioner proposes clarifying amendments.

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.

The primary advantage to the public and the Commonwealth of implementing the amended provisions is greater clarity regarding (i) whether certain real estate devoted to the production of less than 20 acres of trees can be considered real estate devoted to agricultural or horticultural use and (ii) the types of documents that may be useful for verifying compliance with these standards. There are no known disadvantages to the public or the Commonwealth.

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 applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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.

There are no other state agencies that will be particularly affected by the proposed amendments. Commissioners of the revenue and local assessing officers will need to review the amended regulation and may wish to consider whether any changes should be made to their local use value assessment program. No other entities will be particularly affected by these proposed amendments.

Economic Impact

Consistent with § 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 the proposed change versus the status quo.

Impact on State Agencies

For your agency: 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.	VDACS will not incur any costs or realize any savings or revenues as a result of this regulatory action.
For other state agencies: projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no anticipated costs, savings, fees, or revenues for other state agencies resulting from this regulatory action.
For all agencies: Benefits the regulatory change is designed to produce.	The intent of this regulatory action is to provide greater clarity regarding (i) whether certain real estate devoted to the production of less than 20 acres of trees can be considered real estate devoted to agricultural or horticultural use and (ii) the types of documents that may be useful for verifying compliance with these standards.

Impact on Localities

Projected costs, savings, fees, or revenues resulting from the regulatory change.	There are no anticipated costs, savings, fees, or revenues for localities resulting from this regulatory action.
Benefits the regulatory change is designed to produce.	The intent of this regulatory action is to provide greater clarity regarding (i) whether certain real estate devoted to the production of less than 20 acres of trees can be considered real estate devoted to agricultural or horticultural use and (ii) the types of documents that may be useful for verifying compliance with these standards.

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.	Landowners in localities with use value assessment programs will benefit from greater clarity in determining when a parcel of real estate is devoted to agricultural or horticultural use.
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.	The agency is unable to estimate the number of landowners who will benefit from clarifying the method for determining when a parcel of real estate is devoted to agricultural or horticultural use. The agency does not collect data from which it can estimate the number of small businesses affected, but the agency expects many of these landowners are farmers who meet the definition of a small business.
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.	The agency does not expect any costs to individuals and businesses resulting from this regulatory action.
Benefits the regulatory change is designed to produce.	The intent of this regulatory action is to provide greater clarity regarding (i) whether certain real estate devoted to the production of less than 20 acres of trees can be considered real estate devoted to agricultural or horticultural use and (ii) the types of documents that may be useful for verifying compliance with these standards.

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.

The Commissioner considered not amending the regulation in response to the public comments received during the recent periodic review and determined this would not be an appropriate response to stakeholders seeking improvements to the land use assessment program.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B 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 agency considered the impact of the proposed amendments and determined that there are no less stringent requirements that would accomplish the objectives of this regulatory action.

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 EO 19 and the ORM procedures, 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 the 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 regulatory action is not being used to announce a periodic review or a small business impact review. The results of the most recent periodic review and small business impact review were reported in October 2025.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's 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.

No comments were received during the public comment period following the publication of the NOIRA.

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.

The Commissioner 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, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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 or email to:

Kevin Schmidt
Virginia Department of Agriculture and Consumer Services
102 Governor Street
Room 214
Richmond, VA 23219
Email: kevin.schmidt@vdacs.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 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.

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

20-20		This section prohibits any real estate devoted to the production of trees or timber products from qualifying as real estate devoted to agriculture or horticulture unless such real estate: (i) is less than 20 acres, (ii) meets the technical standards prescribed by the State Forester, and (iii) is producing tree or timber products incidental to other farm operations.	The proposed changes clarify that real estate devoted to the production of trees that is in the same parcel as or in a parcel contiguous to real estate that meets one of the requirements established in subsection A of Section 20 may qualify if: (i) the real estate devoted to the production of trees is less than 20 acres and (ii) the real estate is producing trees incidental to other farm operations. Additionally, the proposed changes clarify that parcels separated only by a public right-of-way are considered contiguous. Comments received during the periodic review express concern that some landowners have encountered challenges related to their forest land qualifying for land use assessment. The proposed change is intended to more clearly identify real estate devoted to the production of trees that is eligible for assessment as real estate devoted to agricultural or horticultural use. The proposed change also removes the requirement that real estate devoted to the production of trees meet technical standards prescribed by the State Forester as the State Forester has not prescribed relevant technical standards.
20-40		This section authorizes a commissioner of the revenue or local assessing officer to require the applicant to document what the applicant must certify pursuant to Section 20 and Section 30 and provides a list of documents that the commissioner of the revenue or local assessing officer may find useful in making his determination.	The proposed changes maintain the authority for commissioner of the revenue or local assessing officer to require the applicant to document what the applicant must certify pursuant to Section 20 and Section 30 but states that one of the listed documents may be useful for verifying such certification. Comments received during the periodic review express concern that some commissioners of the revenue and local assessing officers have interpreted Section 40 to require the applicant to provide all of the listed documents. The proposed amendment is intended to clarify that Section 40 does not establish a list of required documents.