



Virginia
Regulatory
Town Hall

Periodic Review and Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Agriculture and Consumer Services (Commissioner of)
VAC Chapter Number:	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
Action Title:	Amend
Date:	September 5, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The regulation establishes standards that are used to determine whether or not real estate is devoted to agricultural or horticultural purposes. Under certain circumstances, land so devoted qualifies for assessment based on its agricultural or horticultural value, rather than on its fair-market value. The impetus for such a regulation can be found in a publication entitled *The Constitution of Virginia: Report of the Commission on Constitutional Revision*. Under the heading of "taxation and finance," the members of the commission proposed:

". . .that the General Assembly be permitted to allow the assessment of agricultural. . .[and] horticultural. . .lands on the basis of use, rather than fair market value, with the object of preserving such lands in urbanizing areas where otherwise rising taxes would force their development for other purposes." [Charlottesville, Virginia: The Michie Company, 1969, pp. 21-22.]

The present regulation is based on law that resulted from such a proposal.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The authors of the Constitution of Virginia followed the recommendation discussed above and indeed permitted the General Assembly to allow for the special assessment of real estate devoted to agricultural and horticultural purposes. Section 2 of Article X of the Constitution provides that:

“All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses. In the event the General Assembly defines and classifies real estate for such purposes, it shall prescribe the limits, conditions, and extent of such deferral or relief. No such deferral or relief shall be granted within the territorial limits of any county, city, town, or regional government except by ordinance adopted by the governing body thereof. . .”

The General Assembly enacted such a scheme of taxation, including authority for the present regulation contained in Section 58.1-3230 of the Code of Virginia. That section provides for “special classifications of real estate,” including a classification entitled “real estate devoted to agricultural use” (which means, *inter alia*, “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. . .”) and also including a classification entitled “real estate devoted to horticultural use” (which means, *inter alia*, “real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services. . .”

(The *Virginia Administrative Code* also cites as authority for this regulation Section 58.1-3240 of the Code of Virginia, which requires the Commissioner of Agriculture and Consumer Services to provide to each local assessing officer affected “a statement of standards” used in determining whether real estate is or is not devoted to agricultural or horticultural purposes.)

Under a newly-enacted amendment to the land-use taxation statute (the amendment is contained in S 901, which amends Section 58.1-3231 of the Code of Virginia), the General Assembly authorizes localities to waive, with respect to real estate devoted to the production of crops that require more than two years from initial planting until commercially feasible harvesting, any requirement contained in the regulation that requires the real estate “to have been used for a particular purpose for a minimum length of time before qualifying as real estate devoted to agricultural use or horticultural use. . . .”

The bill containing the amendment also provides that: “the Commissioner of Agriculture and Consumer Services shall promulgate all reasonable and necessary regulations to carry out the provisions of this act.” This quoted language, along with the language quoted above from Sections 58.1-3230 and 58.1-3240 of the Code of Virginia make it clear that this regulation is mandated.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The agency received no public comment on this regulation as the result of the Notice of Periodic Review published in *The Virginia Register of Regulations* on June 18, 2001, to provide notice of opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). No informal advisory group was formed for the purposes of assisting in the periodic review.

The agency, in its Notice of Intended Regulatory Action commencing the amendment of the regulation, intends to invite comment on whether an advisory group should be formed.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition,

please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The specific and measurable goals of the regulation are as follows:

1. The protection of the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; and
2. The preservation and conservation of real estate for agricultural and horticultural use.

In a "Declaration of Policy" contained in the tax laws as they relate to the agricultural and horticultural use of real estate (the "Declaration of Policy" being the obvious public-interest finding required by the above-quoted provision of the Constitution), the General Assembly calls attention to the public-health and public-welfare benefits of a program of taxation of land based on its agricultural or horticultural use. It is for the reasons specified in this "Declaration of Policy"--reasons that the Virginia Constitution required the General Assembly to articulate first--that the agency concludes that this mandated regulation is essential to protect the health and welfare of citizens. Specifically, the General Assembly states that:

"An expanding population and reduction in the quantity and quality of real estate devoted to agricultural, horticultural, forest and open space uses makes the preservation of such real estate a matter vital to the public interest. It is, therefore, in the public interest (a) to encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and forest products and of open spaces within reach of concentrations of population, to conserve natural resources in forms which will prevent erosion, to protect adequate and safe water supplies, to preserve scenic natural beauty and open spaces and to promote land-use planning and the orderly development of real estate for the accommodation of an expanding population, and (b) to promote a balanced economy and ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes.

It is the intent of this article to provide for the classification, and permit the assessment and taxation, of such real estate in a manner that will promote the preservation of it ultimately for the public benefit." [See Section 58.1-3229, Acts, 1984, c. 675.]

The regulation is effective in achieving its rather limited (albeit mandated) purpose--stating what legitimately is agriculture and horticulture in a broader constitutional and statutory scheme established for the express purpose of affording agricultural and horticultural land a necessary special status under the tax laws.

The regulation is clearly written and easily understandable by the individuals and entities affected.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

One alternative considered was the repeal of the regulation, but this alternative was rejected in part because the authority for the regulation is mandatory.

But even if the regulation could be repealed, it should not be. This regulation is different from other regulations. Unlike many regulations, which often do impose burdens upon citizens regulated, this regulation is a burden-reducing measure--it has the effect of reducing taxes, or at least establishes standards, which, if met, qualify one for a lesser tax bill. (Indeed, as other portions of this report clearly indicate, the thrust of the constitutional and statutory authority for this regulation is burden reduction.) Burden reduction is consistent with the notion that least-burdensome alternatives are the best. In the exercise of its professional judgment in matters relating to agriculture and horticulture, the agency is of the opinion that (subject to the recommendation contained in the next section of this report) this regulation is the least-burdensome alternative for achieving the purpose of the regulation, namely, establishing a set of standards that are to be used to determine whether real estate is devoted to a qualifying agricultural or horticultural purpose.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The agency proposes to amend the regulation in order to satisfy the statutory amendment governing the regulation made by the General Assembly in 2001 through S 901 and to further review the regulation for effectiveness and continued need.

Substance

Please detail any changes that would be implemented.

The changes to the regulation that would be implemented would be changes to conform the regulation to S 901, which require the Commissioner of Agriculture and Consumer Services to promulgate “all reasonable and necessary regulations” to carry out S 901. Such an amendment would, at a minimum, require some notification by the locality, when seeking an interpretation of the regulation, as to whether the locality has enacted an ordinance along the lines authorized by S 901.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulation should have no adverse impact upon the family, including family-impact matters governed by Executive Order 58(99) and Section 2.1-7.2 of the Code of Virginia. The regulation may have the effect (in localities where a scheme of agricultural- or horticultural-use assessment exists) of increasing disposable farm-family income.

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