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Final 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 to reflect regulatory changes required pursuant to Chapter 504 of the 2018 Acts of Assembly; general review of this regulation
Date this document prepared	June 9, 2020

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.

Article 4 of Chapter 32 of the Code of Virginia (Va. Code § 58.1-3229 et seq.) (Virginia Land Use Assessment Law) (Law) 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 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 of Agriculture and Consumer Services (Commissioner) to prescribe uniform standards 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.

Chapter 504 of the 2018 Acts of Assembly amended the definition of real estate devoted to agricultural use and real estate devoted to horticultural use, expanding the scope of the standards that the Commissioner is required to promulgate and resulting in the need to revise 2 VAC 5-20. Additionally, this legislative change requires that any uniform standard prescribed through regulation by the Commissioner stating that real estate must be used for a particular purpose for a minimum length of time before qualifying as real estate devoted to agricultural use or horticultural use must (i) include the use of similar property by a lessee of the owner in calculating such time and (ii) include a shorter minimum length of time for real estate with no prior qualifying use, provided that the owner submits a written document of the owner's intent regarding use of the real estate containing elements set out in the uniform standards. As 2 VAC 5-20-20 currently includes a requirement that real estate devoted to either agricultural or horticultural use must have been devoted to certain uses for at least five consecutive years previous, the proposed amendment to these standards reflect the 2018 amendments to the Law.

The Commissioner also took this opportunity to conduct a periodic review and a small business impact review of this regulation pursuant to Va. Code § 2.2-4007.1 and Executive Order 14 (2018).

Until 2 VAC 5-20 is amended, commissioners of the revenue, local assessing officers, landowners, and other stakeholders may wish to contact legal counsel to address any conflicts that may exist between this regulation and the Law effective July 1, 2018.

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.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

"Law" means the Virginia Land Use Assessment Law (Va. Code § 58.1-3229 et seq.).

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 9, 2020, the Commissioner of Agriculture and Consumer Services adopted amendments to 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.*

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the information previously reported for this regulation on the Agency Background Document regarding the mandate for this regulatory change or any other impetus that specifically prompted its initiation.

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.

Va. Code § 3.2-102(A) states that the Commissioner shall be vested with the powers and duties set out in Va. Code §§ 2.2-601 and 3.2-102 and such other powers and duties as may be prescribed by law.

Va. Code § 58.1-3230 requires that the Commissioner prescribe uniform standards in accordance with the Virginia Administrative Process Act (Va. Code § 2.2-4000 et seq.) for "real estate devoted to agricultural use" and "real estate devoted to horticultural use," and Chapter 504 of the 2018 Acts of Assembly amended this section to expand the scope of the standards that the Commissioner is required to promulgate, resulting in the need to revise 2 VAC 5-20.

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.

The proposed change will bring the regulation into compliance with the changes made to Article 4 of Chapter 32 of the Code of Virginia (Va. Code § 58.1-3229 et seq.) by Chapter 504 of the 2018 Acts of Assembly. Absent a change to the existing regulation, the regulation would remain in conflict with this statute. Additionally, VDACS staff has identified parts of the regulation that would benefit from greater clarity so that the Commissioner is better able to provide opinions upon request by commissioners of the revenue or local assessing officers. This regulatory action does not impact public health or safety; however, general public welfare is protected when regulations are promulgated in compliance with statutory requirements. Additionally, commissioners of the revenue, local assessing officers, and individual landowners will all benefit from standards that are clear and consistent.

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 proposed amendments to the regulation include standards for determining whether real estate meets the expanded definition of real estate devoted to agricultural use or real estate devoted to horticultural use. Specifically, the amendments include standards for determining whether real estate is (i) devoted to the bona fide production for sale of plants and animals, or products made from such plants and animals on the real estate, that are useful to man, (ii) devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery and floral products; and plants or products directly produced from fruits, vegetables, nursery and floral products, or plants on such real estate, or (iii) devoted to and meeting the requirements and qualifications for payments or other compensation pursuant

to soil and water conservation programs under an agreement with an agency of the state or federal government under uniform standards prescribed by the Commissioner in accordance with the Administrative Process Act. The proposed amendments also remove the existing requirement that real estate be used for a particular purpose for a minimum length of time before qualifying as real estate devoted to agricultural use or horticultural 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.

As a result of recent requests from commissioners of the revenue and local assessing officers for the Commissioner to issue opinions pursuant to 2 VAC 5-20-40, agency staff and legal counsel have identified language in the existing regulation that would benefit from greater clarification. The proposed amendments to this regulation will provide greater clarity to commissioners of the revenue and local assessing officers when implementing this regulation and to the Commissioner when asked to provide a formal opinion. Landowners and other members of the public will also benefit from clarification as to what is required for a parcel of land to be considered real estate devoted to agricultural use or to horticultural use. The removal of the five-year previous use requirement may also encourage additional agricultural land that is not currently being farmed to be made available for agricultural use. There are no disadvantages to the public or the Commonwealth.

Until 2 VAC 5-20 is amended, commissioners of the revenue, local assessing officers, landowners, and other stakeholders may wish to contact legal counsel to address any conflicts that may exist between this regulation and the Law effective July 1, 2018.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the information previously reported for this regulation on the Agency Background Document regarding any requirements of the regulatory change that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the information previously reported for this regulation on the Agency Background Document regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change.

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
Andrew W. Smith, Associate Director, Governmental Relations, Virginia Farm Bureau Federation	Believes the edits to these regulations are appropriate to insure the continued success and integrity of Virginia's Land Use Assessment Law. Especially appreciates maintaining a written "purpose" in the regulations. Believes the purpose of the law is very important to capture the broad intent of why this provision for reduced assessment was added to Virginia's Constitution in the early 1970's. States that farmers, local governments, and others rely on the regulations to give them the tools by which to participate. Believes that maintaining this language helps to preserve this vital program for Virginia farmers in preserving their farm and forest land.	The agency thanks the Virginia Farm Bureau Federation for its interest in the proposed regulation.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

No changes have been made since the previous stage.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
2 VAC 5-20-10	N/A	Currently, this section establishes that real estate must meet all of the “following” standards to qualify for agricultural or horticultural use.	The proposed change clarifies that the real estate must meet all of the standards in the regulation to qualify for agricultural or horticultural use.
2 VAC 5-20-20	N/A	Currently, this section requires that, except for certain circumstances, real estate that seeks to be qualified as devoted to agricultural use or horticultural use must meet certain production requirements both for the previous five consecutive years prior as well as currently.	<p>* The proposed change removes the requirement that real estate that seeks to be qualified as devoted to agricultural use or horticultural use meet certain production requirements for the previous five consecutive years. The proposed change clarifies that the applicant must certify that the real estate currently is devoted to the bona fide production for sale of certain plants, animals, fruits, vegetables, or nursery or floral products or devoted to the bona fide production for sale of products produced on the real estate from such plants, animals, fruits, vegetables, or nursery or floral products.</p> <p>* The proposed change removes certain provisions in the section that allowed for exemptions to the five-year history, as these exceptions are no longer needed due to the proposed elimination of the five-year history requirement.</p> <p>* The proposed change allows real estate that is not currently devoted to the production for sale of certain agricultural or horticultural products but that is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to a soil and water conservation program under an agreement with a state or federal agency to meet the requirements of this section.</p>
2 VAC 5-20-30	N/A	Currently, this section requires that the applicant must certify that real estate that seeks to be qualified as devoted to agricultural use or horticultural use is being used in certain conservation practices and	The proposed change clarifies that the applicant must certify that the planned program of management corresponds with the demonstration of one of the “devoted to the bona fide production for sale of” requirements proposed in Section 20.

		<p>programs and certain management practices and programs.</p> <p>Currently, this section requires that the average crop yield per acre on each field crop grown on the real estate during the immediate three years previous be equal to at least one-half of the county or city average for the past three years.</p> <p>Currently, this section includes a requirement that timber production that is in addition to crop, livestock, dairy, poultry, aquaculture, and horticulture production on the real estate must meet the standards prescribed by the Department of Forestry for forest acres and be assessed at use value for forestry purposes.</p>	<p>The proposed change removes the requirement that the average crop yield per acre calculation for each field crop grown on the real estate be based on an average of such calculation on the real estate during the immediate three years previous; the changes still retain the requirement that the average crop yield per acre currently grown on such real estate be equal to at least one-half of the county or city average for the past three years unless the locality prescribes lesser requirements in certain circumstances.</p> <p>The proposed change removes the additional language in this section regarding timber production, as the agency believes subsection B of Section 20 already states that no real estate devoted to the production of trees or timber products may qualify unless it meets the technical standards prescribed by the State Forester.</p>
<p>2 VAC 5-20-40</p>	<p>N/A</p>	<p>Currently, 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.</p> <p>Currently, this section establishes that such documentation may include, in part, a Conservation Farm Management Plan prepared by a professional or gross sales averaging more than \$1,000 annually over the previous three years.</p> <p>Currently, this section requires that a commissioner of the revenue or local assessing officer wishing to request the Commissioner assist with interpreting this regulation include, among other documentation, the total number of acres in soil conservation programs and lists certain federal and state agencies.</p>	<p>The proposed change clarifies that commissioners of the revenue and local assessing officers may require the applicant to document what the applicant must certify pursuant to both Section 20 and Section 30.</p> <p>The proposed change removes the capitalization of the term “Conservation Farm Management Plan,” as the agency believes that this is a reference to a general type of document and not a particular, formal document. The proposed change also removes the suggestion that a commissioner of the revenue or local assessing officer consider requesting gross sales averaging more than \$1,000 annually over the previous three years, instead suggesting that the commissioners of the revenue or local assessing officers consider requesting documentation that demonstrates that the real estate sought to be qualified currently is devoted to the bona fide production for sale of one of the “devoted to the bona fide production for sale of” requirements in Section 20.</p>

		<p>Currently, the regulation requires that a statement be included as to whether the locality waived the five-year history requirement in cases where a commissioner of the revenue or local assessing officer requests the Commissioner assist with the interpretation of this regulation and such case involves a question about the applicability of the exemption to the five-year history required in Section 20.</p>	<p>The proposed change adds a suggestion that a commissioner of the revenue or local assessing officer consider requiring documentation that demonstrates that the real estate sought to be qualified currently is devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil and water conservation program under an agreement with a federal or state government agency.</p> <p>The propose change clarifies that federal or state soil and water conservation program acreage information should be included when a commissioner of the revenue or local assessing officer wishes to request the Commissioner assist with interpreting this regulation and removes the listing of specific federal and state agencies.</p> <p>The proposed change removes the requirement that a commissioner of the revenue or local assessing officer requesting the Commissioner assist with the interpretation of this regulation submit a letter that states whether the locality waived the five-year history in cases involving a questions about the applicability of the exemption to the five-year history.</p>
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